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Title 4. Conservation and Natural Resources			
4 VAC 5-36-50	Amended	19:16 VA.R. 2370	5/21/03
4 VAC 5-36-60	Amended	19:16 VA.R. 2373	5/21/03
4 VAC 5-36-70	Amended	19:16 VA.R. 2375	5/21/03
4 VAC 5-36-90	Amended	19:12 VA.R. 1881	3/27/03
4 VAC 5-36-100	Amended	19:12 VA.R. 1883	3/27/03
4 VAC 5-36-110 through 4 VAC 5-36-140	Amended	19:16 VA.R. 2376-2379	5/21/03
4 VAC 5-36-170 through 4 VAC 5-36-210	Amended	19:16 VA.R. 2379-2392	5/21/03
4 VAC 15-30-50	Amended	19:19 VA.R. 2818	7/1/03
4 VAC 15-40-230	Amended	19:19 VA.R. 2818	7/1/03
4 VAC 15-40-282	Added	19:19 VA.R. 2818	7/1/03
4 VAC 15-40-283	Added	19:19 VA.R. 2818	7/1/03
4 VAC 15-40-284	Added	19:19 VA.R. 2819	7/1/03
4 VAC 15-50-10	Amended	19:19 VA.R. 2819	7/1/03
4 VAC 15-50-20	Amended	19:19 VA.R. 2819	7/1/03
4 VAC 15-50-25	Amended	19:19 VA.R. 2819	7/1/03
4 VAC 15-50-30	Repealed	19:19 VA.R. 2819	7/1/03
4 VAC 15-50-70	Amended	19:19 VA.R. 2819	7/1/03
4 VAC 15-50-71	Added	19:19 VA.R. 2820	7/1/03
4 VAC 15-50-80	Amended	19:19 VA.R. 2820	7/1/03
4 VAC 15-50-81	Added	19:19 VA.R. 2820	7/1/03
4 VAC 15-50-90	Amended	19:19 VA.R. 2820	7/1/03
4 VAC 15-50-91	Added	19:19 VA.R. 2820	7/1/03
4 VAC 15-50-110	Amended	19:19 VA.R. 2820	7/1/03
4 VAC 15-50-120	Amended	19:19 VA.R. 2820	7/1/03
4 VAC 15-60-20	Amended	19:19 VA.R. 2820	7/1/03
4 VAC 15-90-10	Amended	19:19 VA.R. 2821	7/1/03
4 VAC 15-90-20	Amended	19:19 VA.R. 2821	7/1/03
4 VAC 15-90-21	Amended	19:19 VA.R. 2821	7/1/03
4 VAC 15-90-70	Amended	19:19 VA.R. 2821	7/1/03
4 VAC 15-90-80	Amended	19:19 VA.R. 2822	7/1/03
4 VAC 15-90-90	Amended	19:19 VA.R. 2822	7/1/03
4 VAC 15-90-100	Amended	19:19 VA.R. 2822	7/1/03
4 VAC 15-90-110	Amended	19:19 VA.R. 2822	7/1/03
4 VAC 15-90-120	Amended	19:19 VA.R. 2822	7/1/03
4 VAC 15-90-121	Added	19:19 VA.R. 2822	7/1/03
4 VAC 15-90-141	Amended	19:19 VA.R. 2822	7/1/03
4 VAC 15-90-160	Amended	19:19 VA.R. 2822	7/1/03
4 VAC 15-90-170	Amended	19:19 VA.R. 2822	7/1/03
4 VAC 15-90-190	Amended	19:19 VA.R. 2822	7/1/03
4 VAC 15-90-195	Amended	19:19 VA.R. 2823	7/1/03
4 VAC 15-90-200	Amended	19:19 VA.R. 2823	7/1/03
4 VAC 15-90-210	Amended	19:19 VA.R. 2823	7/1/03
4 VAC 15-90-220	Amended	19:19 VA.R. 2823	7/1/03
4 VAC 15-90-230	Amended	19:19 VA.R. 2823	7/1/03

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4 VAC 15-90-231	Added	19:19 VA.R. 2823	7/1/03
4 VAC 15-90-240	Amended	19:19 VA.R. 2823	7/1/03
4 VAC 15-90-241	Added	19:19 VA.R. 2823	7/1/03
4 VAC 15-140-20	Amended	19:19 VA.R. 2823	7/1/03
4 VAC 15-140-40	Repealed	19:19 VA.R. 2823	7/1/03
4 VAC 15-160-10	Amended	19:19 VA.R. 2824	7/1/03
4 VAC 15-160-20	Repealed	19:19 VA.R. 2824	7/1/03
4 VAC 15-160-31	Amended	19:19 VA.R. 2824	7/1/03
4 VAC 15-200-10	Amended	19:19 VA.R. 2824	7/1/03
4 VAC 15-210-30	Amended	19:19 VA.R. 2824	7/1/03
4 VAC 15-210-40	Repealed	19:19 VA.R. 2824	7/1/03
4 VAC 15-210-51	Amended	19:19 VA.R. 2824	7/1/03
4 VAC 15-230-20	Amended	19:19 VA.R. 2824	7/1/03
4 VAC 15-230-30	Repealed	19:19 VA.R. 2824	7/1/03
4 VAC 15-230-60	Amended	19:19 VA.R. 2824	7/1/03
4 VAC 15-230-70	Repealed	19:19 VA.R. 2824	7/1/03
4 VAC 15-240	Erratum	19:23 VA.R. 3412	--
4 VAC 15-240-31	Amended	19:19 VA.R. 2825	7/1/03
4 VAC 15-240-40	Amended	19:19 VA.R. 2825	7/1/03
4 VAC 15-240-50	Amended	19:19 VA.R. 2825	7/1/03
4 VAC 15-240-80	Amended	19:19 VA.R. 2825	7/1/03
4 VAC 15-240-81	Added	19:19 VA.R. 2825	7/1/03
4 VAC 15-240-90	Amended	19:19 VA.R. 2825	7/1/03
4 VAC 15-240-91	Added	19:19 VA.R. 2825	7/1/03
4 VAC 15-260-120	Amended	19:19 VA.R. 2826	7/1/03
4 VAC 15-290-115	Amended	19:19 VA.R. 2826	7/1/03
4 VAC 15-430-40	Erratum	19:14 VA.R. 2176	--
4 VAC 15-430-210	Erratum	19:14 VA.R. 2177	--
4 VAC 20-252-130 emer	Amended	19:12 VA.R. 1905	1/31/03-2/28/03
4 VAC 20-252-130	Amended	19:14 VA.R. 2086	3/1/03
4 VAC 20-252-150 emer	Amended	19:12 VA.R. 1906	1/31/03-2/28/03
4 VAC 20-252-150	Amended	19:14 VA.R. 2087	3/1/03
4 VAC 20-380-10	Amended	19:14 VA.R. 2087	3/1/03
4 VAC 20-380-30	Amended	19:14 VA.R. 2087	3/1/03
4 VAC 20-380-50	Amended	19:14 VA.R. 2087	3/1/03
4 VAC 20-380-60	Amended	19:14 VA.R. 2088	3/1/03
4 VAC 20-490-40	Amended	19:23 VA.R. 3320	7/1/03
4 VAC 20-490-60	Amended	19:23 VA.R. 3320	7/1/03
4 VAC 20-563-10 through 4 VAC 20-563-50 emer	Added	19:16 VA.R. 2417	3/26/03-4/24/03
4 VAC 20-620-50	Amended	19:14 VA.R. 2088	3/1/03
4 VAC 20-620-70	Amended	19:14 VA.R. 2089	3/1/03
4 VAC 20-720-20 emer	Amended	19:12 VA.R. 1906	2/1/03-3/3/03
4 VAC 20-720-40 emer	Amended	19:12 VA.R. 1907	2/1/03-3/3/03
4 VAC 20-720-50 emer	Amended	19:12 VA.R. 1907	2/1/03-3/3/03
4 VAC 20-720-70 emer	Amended	19:12 VA.R. 1908	2/1/03-3/3/03
4 VAC 20-720-80	Erratum	19:12 VA.R. 1915	--
4 VAC 20-720-80 emer	Amended	19:12 VA.R. 1909	2/1/03-3/3/03
4 VAC 20-752-20 emer	Amended	19:23 VA.R. 3385	6/26/03-7/24/03
4 VAC 20-910-45 emer	Amended	19:12 VA.R. 1911	1/31/03-2/28/03
4 VAC 20-910-45	Amended	19:14 VA.R. 2089	3/1/03
4 VAC 20-910-45	Amended	19:23 VA.R. 3320	7/1/03
4 VAC 20-950-30	Amended	19:14 VA.R. 2090	3/1/03
4 VAC 20-950-45	Amended	19:14 VA.R. 2090	3/1/03
4 VAC 20-950-47	Amended	19:23 VA.R. 3321	7/1/03
4 VAC 20-1050-10	Added	19:16 VA.R. 2392	3/26/03
4 VAC 20-1050-20	Added	19:16 VA.R. 2392	3/26/03

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4 VAC 20-1050-30	Added	19:16 VA.R. 2392	3/26/03
4 VAC 20-1060-10 emer	Amended	19:23 VA.R. 3385	6/25/03-7/24/03
4 VAC 20-1060-10	Added	19:16 VA.R. 2393	3/26/03
4 VAC 20-1060-20 emer	Amended	19:23 VA.R. 3385	6/25/03-7/24/03
4 VAC 20-1060-20	Added	19:16 VA.R. 2393	3/26/03
4 VAC 20-1060-30	Added	19:16 VA.R. 2393	3/26/03
4 VAC 25-40 (Forms)	Amended	19:17 VA.R. 2589	--
4 VAC 25-150-120	Amended	19:18 VA.R. 2663	7/1/03
4 VAC 25-160-30	Amended	19:18 VA.R. 2664	7/1/03
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6 VAC 20-210-10 through 6 VAC 20-210-110 emer	Added	19:10 VA.R. 1511-1512	1/7/03-1/6/04
6 VAC 35-20-10	Amended	19:23 VA.R. 3322	9/1/03
6 VAC 35-20-20	Repealed	19:23 VA.R. 3324	9/1/03
6 VAC 35-20-30	Amended	19:23 VA.R. 3324	9/1/03
6 VAC 35-20-35	Added	19:23 VA.R. 3324	9/1/03
6 VAC 35-20-37	Added	19:23 VA.R. 3324	9/1/03
6 VAC 35-20-40	Repealed	19:23 VA.R. 3324	9/1/03
6 VAC 35-20-50	Amended	19:23 VA.R. 3324	9/1/03
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6 VAC 35-20-63	Added	19:23 VA.R. 3325	9/1/03
6 VAC 35-20-65	Added	19:23 VA.R. 3325	9/1/03
6 VAC 35-20-67	Added	19:23 VA.R. 3325	9/1/03
6 VAC 35-20-69	Added	19:23 VA.R. 3325	9/1/03
6 VAC 35-20-70	Repealed	19:23 VA.R. 3326	9/1/03
6 VAC 35-20-75	Added	19:23 VA.R. 3326	9/1/03
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6 VAC 35-20-93	Added	19:23 VA.R. 3328	9/1/03
6 VAC 35-20-94	Added	19:23 VA.R. 3328	9/1/03
6 VAC 35-20-100	Amended	19:23 VA.R. 3328	9/1/03
6 VAC 35-20-110	Amended	19:23 VA.R. 3330	9/1/03
6 VAC 35-20-120	Amended	19:23 VA.R. 3330	9/1/03
6 VAC 35-20-130	Repealed	19:23 VA.R. 3330	9/1/03
6 VAC 35-20-140	Repealed	19:23 VA.R. 3330	9/1/03
6 VAC 35-20-150	Added	19:23 VA.R. 3330	9/1/03
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8 VAC 20-440-10	Amended	19:12 VA.R. 1886	3/28/03
8 VAC 20-440-90	Amended	19:12 VA.R. 1886	3/28/03
8 VAC 20-440-110	Amended	19:12 VA.R. 1886	3/28/03
8 VAC 20-440-120	Amended	19:12 VA.R. 1886	3/28/03
8 VAC 20-440-140	Amended	19:12 VA.R. 1886	3/28/03
8 VAC 20-440-150	Amended	19:12 VA.R. 1886	3/28/03
8 VAC 20-440-160	Amended	19:12 VA.R. 1886	3/28/03
8 VAC 20-440 Appendix A	Amended	19:12 VA.R. 1887	3/28/03
8 VAC 20-440 Appendix B	Amended	19:12 VA.R. 1890	3/28/03
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9 VAC 5-20-204	Amended	19:17 VA.R. 2486	6/4/03
9 VAC 5-20-310	Amended	19:17 VA.R. 2486	6/4/03
9 VAC 5-40-6000 through 9 VAC 5-40-6150	Amended	19:17 VA.R. 2487-2494	7/1/03
9 VAC 5-40-6180	Amended	19:17 VA.R. 2494	7/1/03
9 VAC 5-40-6190	Amended	19:17 VA.R. 2499	7/1/03
9 VAC 5-40-6220	Amended	19:17 VA.R. 2500	7/1/03
9 VAC 5-40-7950	Amended	19:17 VA.R. 2501	7/1/03
9 VAC 5-40-7960	Amended	19:17 VA.R. 2502	7/1/03

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
9 VAC 5-40-8090	Amended	19:17 VA.R. 2505	7/1/03
9 VAC 5-40-8100	Amended	19:17 VA.R. 2505	7/1/03
9 VAC 5-40-8110 through 9 VAC 5-40-8160	Amended	19:17 VA.R. 2507-2519	7/1/03
9 VAC 5-40-8180	Amended	19:17 VA.R. 2519	7/1/03
9 VAC 20-60-17	Amended	19:18 VA.R. 2665	7/1/03
9 VAC 20-60-18	Amended	19:12 VA.R. 1891	3/26/03
9 VAC 20-60-40	Amended	19:18 VA.R. 2665	7/1/03
9 VAC 20-60-70	Amended	19:18 VA.R. 2665	7/1/03
9 VAC 20-60-124	Amended	19:18 VA.R. 2665	7/1/03
9 VAC 20-60-261	Amended	19:18 VA.R. 2665	7/1/03
9 VAC 20-60-262	Amended	19:18 VA.R. 2665	7/1/03
9 VAC 20-60-264	Amended	19:18 VA.R. 2665	7/1/03
9 VAC 20-60-265	Amended	19:18 VA.R. 2668	7/1/03
9 VAC 20-60-270	Amended	19:18 VA.R. 2670	7/1/03
9 VAC 20-60-305	Amended	19:18 VA.R. 2670	7/1/03
9 VAC 20-60-315	Amended	19:18 VA.R. 2670	7/1/03
9 VAC 20-60-328	Amended	19:18 VA.R. 2670	7/1/03
9 VAC 20-60-420	Amended	19:18 VA.R. 2670	7/1/03
9 VAC 20-60-440	Amended	19:18 VA.R. 2670	7/1/03
9 VAC 20-60-450	Amended	19:18 VA.R. 2670	7/1/03
9 VAC 20-60-490	Amended	19:18 VA.R. 2670	7/1/03
9 VAC 20-60-1260	Amended	19:18 VA.R. 2670	7/1/03
9 VAC 20-60-1280	Amended	19:18 VA.R. 2670	7/1/03
9 VAC 20-60-1285	Amended	19:18 VA.R. 2670	7/1/03
9 VAC 20-60-1370	Amended	19:18 VA.R. 2672	7/1/03
9 VAC 20-60-1380	Amended	19:18 VA.R. 2672	7/1/03
9 VAC 20-60-1390	Amended	19:18 VA.R. 2672	7/1/03
9 VAC 20-60-1420	Amended	19:18 VA.R. 2672	7/1/03
9 VAC 20-90-10	Amended	19:18 VA.R. 2672	7/1/03
9 VAC 20-90-20	Repealed	19:18 VA.R. 2672	7/1/03
9 VAC 20-90-30 through 9 VAC 20-90-100	Amended	19:18 VA.R. 2672-2675	7/1/03
9 VAC 20-90-110	Added	19:18 VA.R. 2675	7/1/03
9 VAC 20-90-120	Added	19:18 VA.R. 2675	7/1/03
9 VAC 20-110-10 through 9 VAC 20-110-40	Amended	19:19 VA.R. 2826-2827	7/2/03
9 VAC 20-110-90	Amended	19:19 VA.R. 2827	7/2/03
9 VAC 20-110-100	Amended	19:19 VA.R. 2828	7/2/03
9 VAC 20-110-110	Amended	19:19 VA.R. 2828	7/2/03
9 VAC 20-110-115	Repealed	19:19 VA.R. 2828	7/2/03
9 VAC 20-110-121	Amended	19:19 VA.R. 2828	7/2/03
9 VAC 20-110-122	Amended	19:19 VA.R. 2828	7/2/03
9 VAC 20-130 (Forms)	Amended	19:12 VA.R. 1912	--
9 VAC 20-170-10 through 9 VAC 20-170-60	Added	19:19 VA.R. 2829-2833	7/2/03
9 VAC 20-170-70	Added	19:18 VA.R. 2678	
9 VAC 20-170-70	Erratum	19:23 VA.R. 3412	--
9 VAC 20-170-80 through 9 VAC 20-170-190	Added	19:19 VA.R. 2833-2839	7/2/03
9 VAC 20-170-195	Added	19:18 VA.R. 2679	
9 VAC 20-170-270 through 9 VAC 20-170-420	Added	19:19 VA.R. 2842-2862	7/2/03
9 VAC 25-20-10	Amended	19:18 VA.R. 2680	7/1/03
9 VAC 25-20-110	Amended	19:18 VA.R. 2681	7/1/03
9 VAC 25-20-120	Amended	19:18 VA.R. 2681	7/1/03
9 VAC 25-20-130	Amended	19:18 VA.R. 2681	7/1/03
9 VAC 25-70	Repealed	19:14 VA.R. 2090	4/23/03
9 VAC 25-71-10 through 9 VAC 25-71-70	Added	19:14 VA.R. 2090	4/23/03
9 VAC 25-120 (Forms)	Amended	19:18 VA.R. 2739	--

¹ Section suspended in 19:18 VA.R. 2680.

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
9 VAC 25-140-155	Amended	19:23 VA.R. 3348	8/27/03
9 VAC 25-193-10	Amended	19:23 VA.R. 3332	10/1/03
9 VAC 25-193-30 through 9 VAC 25-193-70	Amended	19:23 VA.R. 3332-3348	10/1/03
9 VAC 25-193-80	Repealed	19:23 VA.R. 3348	10/1/03
9 VAC 25-210 (Forms)	Amended	19:12 VA.R. 1912	--
9 VAC 25-210 (Forms)	Added	19:16 VA.R. 2418	--
9 VAC 25-260-140	Amended	18:24 VA.R. 3289	8/27/03 ²
9 VAC 25-260-155	Amended	18:24 VA.R. 3289	8/27/03 ²
9 VAC 25-260-310	Amended	18:20 VA.R. 2659	8/27/03 ²
9 VAC 25-260-390	Amended	18:20 VA.R. 2661	8/27/03 ²
9 VAC 25-420	Repealed	19:14 VA.R. 2091	4/24/03
9 VAC 25-430	Repealed	19:14 VA.R. 2091	4/24/03
9 VAC 25-440	Repealed	19:14 VA.R. 2091	4/24/03
9 VAC 25-450	Repealed	19:14 VA.R. 2091	4/24/03
9 VAC 25-452	Repealed	19:14 VA.R. 2091	4/24/03
9 VAC 25-460	Repealed	19:14 VA.R. 2091	4/24/03
9 VAC 25-470	Repealed	19:14 VA.R. 2091	4/24/03
9 VAC 25-480	Repealed	19:14 VA.R. 2091	4/24/03
9 VAC 25-490	Repealed	19:14 VA.R. 2091	4/24/03
9 VAC 25-500	Repealed	19:14 VA.R. 2091	4/24/03
9 VAC 25-510	Repealed	19:14 VA.R. 2091	4/24/03
9 VAC 25-520	Repealed	19:14 VA.R. 2091	4/24/03
9 VAC 25-530	Repealed	19:14 VA.R. 2091	4/24/03
9 VAC 25-540	Repealed	19:14 VA.R. 2091	4/24/03
9 VAC 25-550	Repealed	19:14 VA.R. 2091	4/24/03
9 VAC 25-560	Repealed	19:14 VA.R. 2091	4/24/03
9 VAC 25-570	Repealed	19:14 VA.R. 2091	4/24/03
9 VAC 25-572	Repealed	19:14 VA.R. 2091	4/24/03
9 VAC 25-660 (Forms)	Amended	19:12 VA.R. 1912	--
9 VAC 25-660 (Forms)	Added	19:16 VA.R. 2418	--
9 VAC 25-670 (Forms)	Amended	19:12 VA.R. 1912	--
9 VAC 25-680 (Forms)	Amended	19:12 VA.R. 1912	--
9 VAC 25-680 (Forms)	Added	19:16 VA.R. 2418	--
9 VAC 25-690 (Forms)	Amended	19:12 VA.R. 1912	--
9 VAC 25-690 (Forms)	Added	19:16 VA.R. 2418	--
9 VAC 25-720	Erratum	19:20 VA.R. 2999	--
9 VAC 25-720-10 through 9 VAC 25-720-140	Added	19:14 VA.R. 2091-2138	4/24/03
9 VAC 25-720-50	Erratum	19:18 VA.R. 2746-2747	--
9 VAC 25-720-80	Erratum	19:18 VA.R. 2747	--
9 VAC 25-720-120	Erratum	19:18 VA.R. 2747	--
9 VAC 25-720-130	Erratum	19:18 VA.R. 2747	--
9 VAC 25-730	Repealed	19:14 VA.R. 2090	4/23/03
Title 11. Gaming			
11 VAC 5-10-10 through 11 VAC 5-10-70	Amended	19:15 VA.R. 2264	5/7/03
11 VAC 5-10-80	Added	19:15 VA.R. 2264	5/7/03
11 VAC 5-20-10	Amended	19:15 VA.R. 2265	5/7/03
11 VAC 5-20-60	Amended	19:15 VA.R. 2265	5/7/03
11 VAC 5-20-70	Amended	19:15 VA.R. 2265	5/7/03
11 VAC 5-20-80	Amended	19:15 VA.R. 2265	5/7/03
11 VAC 5-20-90	Repealed	19:15 VA.R. 2265	5/7/03
11 VAC 5-20-100	Repealed	19:15 VA.R. 2265	5/7/03
11 VAC 5-20-110	Repealed	19:15 VA.R. 2265	5/7/03
11 VAC 5-20-120 through 11 VAC 5-20-180	Amended	19:15 VA.R. 2265	5/7/03
11 VAC 5-20-420	Amended	19:15 VA.R. 2265	5/7/03

² Notice of effective date published in 19:23 VA. R. 3348.

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
11 VAC 5-30	Repealed	19:15 VA.R. 2265	5/7/03
11 VAC 5-31-10 through 11 VAC 5-31-200	Added	19:15 VA.R. 2266	5/7/03
11 VAC 5-40	Repealed	19:15 VA.R. 2266	5/7/03
11 VAC 5-41-10 through 11 VAC 5-41-340	Added	19:15 VA.R. 2266-2269	5/7/03
Title 12. Health			
12 VAC 5-31-610	Added	19:3 VA.R. 493	³
12 VAC 5-31-620	Added	19:3 VA.R. 494	³
12 VAC 5-31-730	Added	19:3 VA.R. 516	³
12 VAC 5-31-940	Added	19:3 VA.R. 503	³
12 VAC 5-31-1030	Added	19:3 VA.R. 504	5/6/03 ⁴
12 VAC 5-31-1140	Added	19:3 VA.R. 505	5/6/03 ⁴
12 VAC 5-90-80 emer	Amended	19:22 VA.R. 3220	6/24/03-6/23/04
12 VAC 5-90-80 emer	Amended	19:13 VA.R. 1971	2/11/03-2/10/04
12 VAC 5-90-80 emer	Amended	19:18 VA.R. 2737	4/24/03-4/23/04
12 VAC 5-120-50	Amended	19:22 VA.R. 3215	8/13/03
12 VAC 5-200-10	Amended	19:22 VA.R. 3215	8/13/03
12 VAC 5-585-10	Amended	19:14 VA.R. 2138	4/23/03
12 VAC 5-585-40	Amended	19:14 VA.R. 2140	4/23/03
12 VAC 5-585-50	Amended	19:14 VA.R. 2141	4/23/03
12 VAC 5-585-270	Amended	19:14 VA.R. 2141	4/23/03
12 VAC 5-585-660 through 12 VAC 5-585-750	Added	19:14 VA.R. 2141-2145	4/23/03
12 VAC 5-590-10	Amended	19:17 VA.R. 2520	6/4/03
12 VAC 5-590-370	Amended	19:17 VA.R. 2526	6/4/03
12 VAC 5-590-420	Amended	19:17 VA.R. 2549	6/4/03
12 VAC 5-590-420	Amended	19:20 VA.R. 2982	7/16/03
12 VAC 5-590-440	Amended	19:17 VA.R. 2565	6/4/03
12 VAC 5-590-530	Amended	19:17 VA.R. 2568	6/4/03
12 VAC 5-590-530	Amended	19:20 VA.R. 2982	7/16/03
12 VAC 5-590-550	Amended	19:20 VA.R. 2982	7/16/03
12 VAC 5-590-990, Appendix F and Appendix G	Amended	19:20 VA.R. 2983-2984	7/16/03
12 VAC 5-590 Appendix M	Amended	19:17 VA.R. 2575	6/4/03
12 VAC 30-20-80	Amended	19:18 VA.R. 2682	7/1/03
12 VAC 30-20-150	Amended	19:18 VA.R. 2682	7/1/03
12 VAC 30-20-160	Amended	19:18 VA.R. 2683	7/1/03
12 VAC 30-40-220 emer	Amended	19:22 VA.R. 3222	7/1/03-6/30/04
12 VAC 30-40-235 emer	Added	19:21 VA.R. 3076	8/1/03-7/31/04
12 VAC 30-40-345 emer	Amended	19:22 VA.R. 3224	7/1/03-6/30/04
12 VAC 30-50-10 emer	Amended	19:21 VA.R. 3078	7/1/03-6/30/04
12 VAC 30-50-20 emer	Amended	19:21 VA.R. 3078	7/1/03-6/30/04
12 VAC 30-50-50 emer	Amended	19:21 VA.R. 3079	7/1/03-6/30/04
12 VAC 30-50-60 emer	Amended	19:21 VA.R. 3079	7/1/03-6/30/04
12 VAC 30-50-120 emer	Amended	19:21 VA.R. 3080	7/1/03-6/30/04
12 VAC 30-50-140	Amended	19:18 VA.R. 2684	7/1/03
12 VAC 30-50-140 emer	Amended	19:21 VA.R. 3080	7/1/03-6/30/04
12 VAC 30-50-150	Amended	19:18 VA.R. 2685	7/1/03
12 VAC 30-50-160	Amended	19:18 VA.R. 2686	7/1/03
12 VAC 30-50-229.1 emer	Amended	19:23 VA.R. 3387	7/1/03-6/30/04
12 VAC 30-50-460	Repealed	19:18 VA.R. 2686	7/1/03
12 VAC 30-50-530 emer	Amended	19:21 VA.R. 3081	7/1/03-6/30/04
12 VAC 30-60-40 emer	Amended	19:23 VA.R. 3391	7/1/03-6/30/04
12 VAC 30-60-70	Amended	19:18 VA.R. 2687	7/1/03
12 VAC 30-60-320 emer	Amended	19:23 VA.R. 3392	7/1/03-6/30/04
12 VAC 30-70-201	Amended	19:21 VA.R. 3058	8/1/03

³ Section withdrawn in 19:16 VA.R. 2393.

⁴ Section readopted in 19:16 VA.R. 2393.

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
12 VAC 30-70-221	Amended	19:18 VA.R. 2699	7/1/03
12 VAC 30-70-271 emer	Amended	19:22 VA.R. 3225	7/1/03-6/30/04
12 VAC 30-70-281	Amended	19:18 VA.R. 2699	7/1/03
12 VAC 30-70-351	Amended	19:18 VA.R. 2699	7/1/03
12 VAC 30-70-351 emer	Amended	19:21 VA.R. 3082	7/1/03-6/30/04
12 VAC 30-70-391 emer	Amended	19:22 VA.R. 3226	7/1/03-6/30/04
12 VAC 30-80-20	Amended	19:18 VA.R. 2699	7/1/03
12 VAC 30-80-40	Amended	19:18 VA.R. 2701	7/1/03
12 VAC 30-80-75 emer	Added	19:23 VA.R. 3391	7/1/03-6/30/04
12 VAC 30-90-264 emer	Amended	19:23 VA.R. 3393	7/1/03-6/30/04
12 VAC 30-80-200 emer	Added	19:21 VA.R. 3085	7/1/03-6/30/04
12 VAC 30-90-41	Amended	19:18 VA.R. 2702	7/1/03
12 VAC 30-90-41.2 emer	Added	19:22 VA.R. 3226	7/1/03-6/30/04
12 VAC 30-90-257	Added	19:18 VA.R. 2702	7/1/03
12 VAC 30-110-1210	Repealed	19:18 VA.R. 2689	7/1/03
12 VAC 30-110-1350 through 12 VAC 30-110-1410	Added	19:18 VA.R. 2703	6/19/03
12 VAC 30-120-50	Amended	19:18 VA.R. 2690	7/1/03
12 VAC 30-120-140 emer	Amended	19:15 VA.R. 2270	3/17/03-3/16/04
12 VAC 30-120-150 emer	Amended	19:15 VA.R. 2273	3/17/03-3/16/04
12 VAC 30-120-160 emer	Amended	19:15 VA.R. 2274	3/17/03-3/16/04
12 VAC 30-120-165 emer	Added	19:15 VA.R. 2276	3/17/03-3/16/04
12 VAC 30-120-170 emer	Amended	19:15 VA.R. 2281	3/17/03-3/16/04
12 VAC 30-120-180 emer	Amended	19:15 VA.R. 2282	3/17/03-3/16/04
12 VAC 30-120-190 emer	Amended	19:15 VA.R. 2284	3/17/03-3/16/04
12 VAC 30-120-260	Amended	19:23 VA.R. 3349	8/27/03
12 VAC 30-120-280	Amended	19:23 VA.R. 3350	8/27/03
12 VAC 30-120-300	Amended	19:23 VA.R. 3351	8/27/03
12 VAC 30-120-360 through 12 VAC 30-120-420	Amended	19:23 VA.R. 3352-3358	8/27/03
12 VAC 30-120-490	Amended	19:18 VA.R. 2692	7/1/03
12 VAC 30-120-500	Amended	19:18 VA.R. 2693	7/1/03
12 VAC 30-120-520 through 12 VAC 30-120-550	Amended	19:18 VA.R. 2694-2699	7/1/03
12 VAC 30-130-50	Amended	19:18 VA.R. 2699	7/1/03
12 VAC 30-130-620 emer	Amended	19:21 VA.R. 3077	8/1/03-7/31/04
12 VAC 30-141-10 through 12 VAC 30-141-660	Added	19:21 VA.R. 3058-3071	8/1/03
12 VAC 35-11-10 through 12 VAC 35-11-90	Amended	19:19 VA.R. 2864-2865	7/2/03
12 VAC 35-11-15	Added	19:19 VA.R. 2864	7/2/03
12 VAC 35-11-100	Repealed	19:19 VA.R. 2864	7/2/03
12 VAC 35-11-110	Added	19:19 VA.R. 2865	7/2/03
12 VAC 35-40-10 through 12 VAC 35-40-340	Repealed	19:19 VA.R. 2865	8/1/03
12 VAC 35-45-10 through 12 VAC 35-45-200	Added	19:19 VA.R. 2865-2866	8/1/03
Title 13. Housing			
13 VAC 10-40-110	Amended	19:12 VA.R. 1892	1/24/03
13 VAC 10-40-220	Amended	19:12 VA.R. 1892	1/24/03
13 VAC 10-40-230	Amended	19:12 VA.R. 1892	1/24/03
13 VAC 10-180-10	Amended	19:16 VA.R. 2394	4/2/03
13 VAC 10-180-50	Amended	19:16 VA.R. 2394	4/2/03
13 VAC 10-180-60	Amended	19:16 VA.R. 2394	4/2/03
13 VAC 10-180-60	Amended	19:16 VA.R. 2404	1/1/04
Title 14. Insurance			
14 VAC 5-71 (Forms)	Amended	19:23 VA.R. 3409	--
14 VAC 5-71-70	Erratum	19:22 VA.R. 3230	--
14 VAC 5-71-80	Erratum	19:22 VA.R. 3231	--
14 VAC 5-71-90	Erratum	19:22 VA.R. 3231	--
14 VAC 5-71-91	Erratum	19:22 VA.R. 3232	--
14 VAC 5-71-92	Erratum	19:22 VA.R. 3233	--
14 VAC 5-200-20	Amended	19:12 VA.R. 1893	4/1/03

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
14 VAC 5-200-30	Amended	19:12 VA.R. 1893	4/1/03
14 VAC 5-200-40	Amended	19:12 VA.R. 1893	4/1/03
14 VAC 5-200-60	Amended	19:12 VA.R. 1893	4/1/03
14 VAC 5-200-75	Amended	19:12 VA.R. 1893	4/1/03
14 VAC 5-200-77	Added	19:12 VA.R. 1894	4/1/03
14 VAC 5-200-150	Amended	19:12 VA.R. 1894	4/1/03
14 VAC 5-200-153	Added	19:12 VA.R. 1894	4/1/03
14 VAC 5-200-200	Amended	19:12 VA.R. 1894	4/1/03
14 VAC 5-260 (Forms)	Amended	19:14 VA.R. 2169	--
14 VAC 5-270-40	Amended	19:21 VA.R. 3071	7/1/03
14 VAC 5-270-80	Amended	19:21 VA.R. 3071	7/1/03
Title 15. Judicial			
15 VAC 5-80-50	Amended	19:17 VA.R. 2579	4/11/03
Title 16. Labor and Employment			
16 VAC 15-10-10	Amended	19:19 VA.R. 2867	7/2/03
16 VAC 15-10-20	Amended	19:19 VA.R. 2867	7/2/03
16 VAC 15-10-40	Amended	19:19 VA.R. 2867	7/2/03
16 VAC 15-10-50	Amended	19:19 VA.R. 2867	7/2/03
16 VAC 15-10-80	Amended	19:19 VA.R. 2867	7/2/03
16 VAC 15-10-90	Amended	19:19 VA.R. 2867	7/2/03
16 VAC 15-10-100	Amended	19:19 VA.R. 2867	7/2/03
16 VAC 15-40-50	Amended	19:21 VA.R. 3072	8/1/03
16 VAC 25-50-20	Amended	19:19 VA.R. 2867	7/2/03
16 VAC 25-50-150	Amended	19:19 VA.R. 2867	7/2/03
16 VAC 25-50-340	Amended	19:19 VA.R. 2867	7/2/03
16 VAC 25-50-440	Amended	19:19 VA.R. 2868	7/2/03
16 VAC 25-50-445	Added	19:19 VA.R. 2868	7/2/03
16 VAC 25-85-1904.10	Amended	19:23 VA.R. 3359	1/1/04
16 VAC 25-85-1904.12	Amended	19:23 VA.R. 3359	1/1/04
16 VAC 25-85-1904.29	Amended	19:23 VA.R. 3359	1/1/04
16 VAC 25-90-1910.178	Amended	19:23 VA.R. 3359	9/1/03
16 VAC 30-50-30	Amended	19:18 VA.R. 2703	7/1/03
Title 18. Professional and Occupational Licensing			
18 VAC 5-21-20	Amended	19:12 VA.R. 1895	3/26/03
18 VAC 15-40-10 through 18 VAC 15-40-190	Added	19:18 VA.R. 2706-2712	7/1/03
18 VAC 25-10-10 through 18 VAC 25-10-50	Amended	19:19 VA.R. 2868	7/3/03
18 VAC 25-10-90	Amended	19:19 VA.R. 2868	7/3/03
18 VAC 41-20-10 through 18 VAC 41-20-280	Added	19:18 VA.R. 2712-2714	7/1/03
18 VAC 41-40-10 through 18 VAC 41-40-260 emer	Added	19:23 VA.R. 3396-3403	7/1/03-6/30/04
18 VAC 60-20-10	Amended	19:20 VA.R. 2984	7/16/03
18 VAC 60-20-90	Amended	19:18 VA.R. 2714	6/18/03
18 VAC 60-20-106	Added	19:18 VA.R. 2714	6/18/03
18 VAC 60-20-200	Amended	19:20 VA.R. 2985	7/16/03
18 VAC 60-20-210	Amended	19:20 VA.R. 2985	7/16/03
18 VAC 60-20-220	Amended	19:20 VA.R. 2985	7/16/03
18 VAC 65-20-70	Amended	19:19 VA.R. 2869	7/2/03
18 VAC 65-20-130	Amended	19:19 VA.R. 2869	7/2/03
18 VAC 65-20-140	Amended	19:19 VA.R. 2869	7/2/03
18 VAC 65-20-150	Repealed	19:19 VA.R. 2869	7/2/03
18 VAC 65-20-151	Added	19:19 VA.R. 2869	7/2/03
18 VAC 65-20-152	Added	19:19 VA.R. 2869	7/2/03
18 VAC 65-20-153	Added	19:19 VA.R. 2869	7/2/03
18 VAC 65-20-154	Added	19:19 VA.R. 2869	7/2/03
18 VAC 65-20-500	Amended	19:19 VA.R. 2869	7/2/03
18 VAC 76-30-10 through 18 VAC 76-30-120	Added	19:19 VA.R. 2869-2870	7/2/03

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
18 VAC 85-20-22 emer	Amended	19:23 VA.R. 3404	7/15/03-7/14/04
18 VAC 85-20-122	Amended	19:21 VA.R. 3073	7/30/03
18 VAC 85-20-210	Amended	19:21 VA.R. 3074	7/30/03
18 VAC 85-20-225	Added	19:18 VA.R. 2715	6/18/03
18 VAC 85-20-280	Amended	19:19 VA.R. 2870	7/2/03
18 VAC 85-20-280	Amended	19:21 VA.R. 3074	7/30/03
18 VAC 85-20-285	Added	19:19 VA.R. 2871	7/2/03
18 VAC 85-20-290	Amended	19:19 VA.R. 2871	7/2/03
18 VAC 85-20-300	Amended	19:19 VA.R. 2871	7/2/03
18 VAC 85-20-310 through 18 VAC 85-20-390	Added	19:18 VA.R. 2719-2720	6/18/03
18 VAC 85-40-10	Amended	19:19 VA.R. 2873	7/2/03
18 VAC 85-40-35	Added	19:19 VA.R. 2873	7/2/03
18 VAC 85-40-40	Amended	19:19 VA.R. 2873	7/2/03
18 VAC 85-40-45	Amended	19:19 VA.R. 2873	7/2/03
18 VAC 85-40-50	Amended	19:19 VA.R. 2873	7/2/03
18 VAC 85-40-55	Added	19:18 VA.R. 2717	6/18/03
18 VAC 85-40-60	Amended	19:19 VA.R. 2873	7/2/03
18 VAC 85-40-61	Amended	19:19 VA.R. 2873	7/2/03
18 VAC 85-40-65	Amended	19:19 VA.R. 2873	7/2/03
18 VAC 85-40-66	Added	19:19 VA.R. 2873	7/2/03
18 VAC 85-40-80	Repealed	19:19 VA.R. 2873	7/2/03
18 VAC 85-50-10	Amended	19:18 VA.R. 2722	6/18/03
18 VAC 85-50-40	Amended	19:18 VA.R. 2722	6/18/03
18 VAC 85-50-59	Added	19:18 VA.R. 2722	6/18/03
18 VAC 85-50-101	Amended	19:18 VA.R. 2722	6/18/03
18 VAC 85-50-110	Amended	19:18 VA.R. 2722	6/18/03
18 VAC 85-50-115	Amended	19:18 VA.R. 2722	6/18/03
18 VAC 85-80-65	Added	19:18 VA.R. 2717	6/18/03
18 VAC 85-101-10	Amended	19:19 VA.R. 2873	7/2/03
18 VAC 85-101-25	Added	19:19 VA.R. 2873	7/2/03
18 VAC 85-101-30 through 18 VAC 85-101-60	Amended	19:19 VA.R. 2873	7/2/03
18 VAC 85-101-61	Added	19:19 VA.R. 2873	7/2/03
18 VAC 85-101-80	Repealed	19:19 VA.R. 2873	7/2/03
18 VAC 85-101-90	Repealed	19:19 VA.R. 2873	7/2/03
18 VAC 85-101-100	Amended	19:19 VA.R. 2873	7/2/03
18 VAC 85-101-130	Amended	19:19 VA.R. 2873	7/2/03
18 VAC 85-101-140	Amended	19:19 VA.R. 2873	7/2/03
18 VAC 85-101-150	Amended	19:19 VA.R. 2873	7/2/03
18 VAC 85-101-151	Amended	19:19 VA.R. 2873	7/2/03
18 VAC 85-101-160	Repealed	19:19 VA.R. 2873	7/2/03
18 VAC 85-101-145	Added	19:18 VA.R. 2717	6/18/03
18 VAC 85-110-145	Added	19:18 VA.R. 2718	6/18/03
18 VAC 85-120-85	Added	19:18 VA.R. 2718	6/18/03
18 VAC 90-20-30 emer	Amended	19:23 VA.R. 3406	7/15/03-7/14/04
18 VAC 90-20-271	Added	19:18 VA.R. 2722	6/18/03
18 VAC 90-20-360	Amended	19:13 VA.R. 1967	4/9/03
18 VAC 90-20-361	Added	19:13 VA.R. 1967	4/9/03
18 VAC 90-20-362	Added	19:13 VA.R. 1967	4/9/03
18 VAC 90-20-363	Added	19:13 VA.R. 1968	4/9/03
18 VAC 90-20-364	Added	19:13 VA.R. 1968	4/9/03
18 VAC 90-30-10	Amended	19:19 VA.R. 2874	7/2/03
18 VAC 90-30-70	Amended	19:19 VA.R. 2874	7/2/03
18 VAC 90-30-90	Amended	19:19 VA.R. 2874	7/2/03
18 VAC 95-20-10	Amended	19:19 VA.R. 2874	7/2/03
18 VAC 95-20-175	Amended	19:19 VA.R. 2875	7/2/03
18 VAC 95-20-200	Amended	19:19 VA.R. 2875	7/2/03

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
18 VAC 95-20-220	Amended	19:19 VA.R. 2876	7/2/03
18 VAC 95-20-230	Amended	19:19 VA.R. 2876	7/2/03
18 VAC 95-20-290	Repealed	19:19 VA.R. 2876	7/2/03
18 VAC 95-20-300	Amended	19:19 VA.R. 2876	7/2/03
18 VAC 95-20-310	Amended	19:19 VA.R. 2876	7/2/03
18 VAC 95-20-330	Amended	19:19 VA.R. 2877	7/2/03
18 VAC 95-20-340	Amended	19:19 VA.R. 2877	7/2/03
18 VAC 95-20-380	Amended	19:19 VA.R. 2877	7/2/03
18 VAC 95-20-390	Amended	19:19 VA.R. 2877	7/2/03
18 VAC 105-20-75	Added	19:19 VA.R. 2877	7/2/03
18 VAC 110-20-75	Added	19:19 VA.R. 2878	7/2/03
18 VAC 110-20-170	Amended	19:19 VA.R. 2878	7/2/03
18 VAC 110-20-240	Amended	19:20 VA.R. 2986	7/16/03
18 VAC 110-20-255	Added	19:20 VA.R. 2986	7/16/03
18 VAC 110-20-275	Added	19:20 VA.R. 2986	7/16/03
18 VAC 110-20-320	Amended	19:20 VA.R. 2986	7/16/03
18 VAC 110-20-330	Amended	19:19 VA.R. 2878	7/2/03
18 VAC 110-20-400	Amended	19:20 VA.R. 2986	7/16/03
18 VAC 110-20-411	Amended	19:19 VA.R. 2878	7/2/03
18 VAC 110-20-430	Repealed	19:20 VA.R. 2986	7/16/03
18 VAC 110-20-530	Amended	19:20 VA.R. 2986	7/16/03
18 VAC 110-20-730	Added	19:20 VA.R. 2986	7/16/03
18 VAC 115-30-10	Amended	19:18 VA.R. 2724	6/18/03
18 VAC 115-30-30	Amended	19:18 VA.R. 2724	6/18/03
18 VAC 115-30-40	Amended	19:18 VA.R. 2724	6/18/03
18 VAC 115-30-45	Amended	19:18 VA.R. 2724	6/18/03
18 VAC 115-30-50	Amended	19:18 VA.R. 2724	6/18/03
18 VAC 115-30-60	Amended	19:18 VA.R. 2724	6/18/03
18 VAC 115-30-61	Added	19:18 VA.R. 2724	6/18/03
18 VAC 115-30-62	Added	19:18 VA.R. 2724	6/18/03
18 VAC 115-30-70	Repealed	19:18 VA.R. 2724	6/18/03
18 VAC 115-30-90	Amended	19:18 VA.R. 2724	6/18/03
18 VAC 115-30-110	Amended	19:18 VA.R. 2724	6/18/03
18 VAC 115-30-140	Amended	19:18 VA.R. 2724	6/18/03
18 VAC 120-40-10	Amended	19:23 VA.R. 3361	8/27/03
18 VAC 120-40-20	Amended	19:23 VA.R. 3361	8/27/03
18 VAC 120-40-30	Repealed	19:23 VA.R. 3362	8/27/03
18 VAC 120-40-40 through 18 VAC 120-40-140	Amended	19:23 VA.R. 3362-3363	8/27/03
18 VAC 120-40-170 through 18 VAC 120-40-260	Amended	19:23 VA.R. 3363-3365	8/27/03
18 VAC 120-40-290	Amended	19:23 VA.R. 3365	8/27/03
18 VAC 120-40-350	Amended	19:23 VA.R. 3365	8/27/03
18 VAC 120-40-380	Amended	19:23 VA.R. 3365	8/27/03
18 VAC 120-40-400	Amended	19:23 VA.R. 3366	8/27/03
18 VAC 120-40-430	Amended	19:23 VA.R. 3366	8/27/03
18 VAC 130-20-10	Amended	19:18 VA.R. 2724	7/1/03
18 VAC 130-20-30	Amended	19:18 VA.R. 2728	7/1/03
18 VAC 130-20-40	Amended	19:18 VA.R. 2729	7/1/03
18 VAC 130-20-50	Amended	19:18 VA.R. 2729	7/1/03
18 VAC 130-20-60	Amended	19:18 VA.R. 2730	7/1/03
18 VAC 130-20-70	Amended	19:18 VA.R. 2730	7/1/03
18 VAC 130-20-110	Amended	19:18 VA.R. 2730	7/1/03
18 VAC 130-20-170	Amended	19:18 VA.R. 2731	7/1/03
18 VAC 130-20-180	Amended	19:18 VA.R. 2731	7/1/03
18 VAC 130-20-200	Amended	19:18 VA.R. 2733	7/1/03
18 VAC 130-20-210	Amended	19:18 VA.R. 2733	7/1/03
18 VAC 130-20-220	Amended	19:18 VA.R. 2733	7/1/03

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
18 VAC 130-20-230	Amended	19:18 VA.R. 2734	7/1/03
18 VAC 135-20-10 through 18 VAC 135-20-80	Amended	19:12 VA.R. 1899-1901	4/1/03
18 VAC 135-20-30	Erratum	19:14 VA.R. 2177	--
18 VAC 135-20-60	Erratum	19:14 VA.R. 2177	--
18 VAC 135-20-100	Amended	19:12 VA.R. 1901	4/1/03
18 VAC 135-20-105	Added	19:12 VA.R. 1901	4/1/03
18 VAC 135-20-110 through 18 VAC 135-20-150	Amended	19:12 VA.R. 1901	4/1/03
18 VAC 135-20-155	Added	19:12 VA.R. 1901	4/1/03
18 VAC 135-20-160 through 18 VAC 135-20-180	Amended	19:12 VA.R. 1901	4/1/03
18 VAC 135-20-185	Added	19:12 VA.R. 1901	4/1/03
18 VAC 135-20-190	Amended	19:12 VA.R. 1901	4/1/03
18 VAC 135-20-200	Repealed	19:12 VA.R. 1903	4/1/03
18 VAC 135-20-220	Amended	19:12 VA.R. 1903	4/1/03
18 VAC 135-20-230	Repealed	19:12 VA.R. 1903	4/1/03
18 VAC 135-20-240 through 18 VAC 135-20-300	Amended	19:12 VA.R. 1903-1904	4/1/03
18 VAC 135-20-260	Erratum	19:14 VA.R. 2177	--
18 VAC 135-20-320	Repealed	19:12 VA.R. 1904	4/1/03
18 VAC 135-20-330	Amended	19:12 VA.R. 1904	4/1/03
18 VAC 135-20-340	Amended	19:12 VA.R. 1904	4/1/03
18 VAC 135-20-360	Amended	19:12 VA.R. 1904	4/1/03
18 VAC 135-20-370	Amended	19:12 VA.R. 1904	4/1/03
18 VAC 135-20-410	Amended	19:12 VA.R. 1904	4/1/03
18 VAC 135-40-10	Repealed	19:19 VA.R. 2880	7/2/03
18 VAC 135-40-20	Amended	19:19 VA.R. 2880	7/2/03
18 VAC 135-40-30	Repealed	19:19 VA.R. 2880	7/2/03
18 VAC 135-40-40	Repealed	19:19 VA.R. 2880	7/2/03
18 VAC 135-40-50	Amended	19:19 VA.R. 2880	7/2/03
18 VAC 135-40-60	Amended	19:19 VA.R. 2880	7/2/03
18 VAC 135-40-70	Repealed	19:19 VA.R. 2880	7/2/03
18 VAC 135-40-80	Amended	19:19 VA.R. 2880	7/2/03
18 VAC 135-40-90	Repealed	19:19 VA.R. 2880	7/2/03
18 VAC 135-40-110	Amended	19:19 VA.R. 2880	7/2/03
18 VAC 135-40-120	Repealed	19:19 VA.R. 2880	7/2/03
18 VAC 135-40-130	Repealed	19:19 VA.R. 2880	7/2/03
18 VAC 135-40-140	Amended	19:19 VA.R. 2880	7/2/03
18 VAC 135-40-150	Amended	19:19 VA.R. 2880	7/2/03
18 VAC 135-40-160	Amended	19:19 VA.R. 2881	7/2/03
18 VAC 135-40-170 through 18 VAC 135-40-410	Repealed	19:19 VA.R. 2881	7/2/03
18 VAC 135-40-420	Amended	19:19 VA.R. 2881	7/2/03
18 VAC 135-40-430	Amended	19:19 VA.R. 2881	7/2/03
18 VAC 135-40-440 through 18 VAC 135-40-530	Repealed	19:19 VA.R. 2882	7/2/03
18 VAC 140-20-30	Amended	19:14 VA.R. 2145	4/23/03
18 VAC 150-20-135	Added	19:22 VA.R. 3217	8/13/03
Title 19. Public Safety			
19 VAC 30-170-5	Repealed	19:23 VA.R. 3367	7/3/03
19 VAC 30-170-10	Repealed	19:23 VA.R. 3368	7/3/03
19 VAC 30-170-15	Added	19:23 VA.R. 3368	7/3/03
19 VAC 30-170-20	Repealed	19:23 VA.R. 3368	7/3/03
19 VAC 30-170-30	Amended	19:23 VA.R. 3369	7/3/03
19 VAC 30-170-40	Repealed	19:23 VA.R. 3370	7/3/03
19 VAC 30-170-50	Amended	19:23 VA.R. 3370	7/3/03
19 VAC 30-170-60	Repealed	19:23 VA.R. 3370	7/3/03
Title 20. Public Utilities and Telecommunications			
20 VAC 5-200	Erratum	19:20 VA.R. 2999	--
20 VAC 5-312-20	Amended	19:17 VA.R. 2579	4/10/03
20 VAC 5-400-180	Repealed	19:17 VA.R. 2583	4/10/03

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
20 VAC 5-417	Erratum	19:20 VA.R. 2999	--
20 VAC 5-417-10 through 20 VAC 5-417-80	Added	19:17 VA.R. 2583-2587	4/10/03
20 VAC 5-429-10 through 20 VAC 5-429-60	Added	19:17 VA.R. 2587-2588	4/10/03
Title 21. Securities and Retail Franchising			
21 VAC 5-10-10	Amended	19:23 VA.R. 3373	7/1/03
21 VAC 5-20-70	Amended	19:23 VA.R. 3373	7/1/03
21 VAC 5-20-85	Amended	19:23 VA.R. 3373	7/1/03
21 VAC 5-20-155	Amended	19:23 VA.R. 3373	7/1/03
21 VAC 5-20-220	Amended	19:23 VA.R. 3373	7/1/03
21 VAC 5-20-225	Added	19:23 VA.R. 3373	7/1/03
21 VAC 5-20-240	Amended	19:23 VA.R. 3373	7/1/03
21 VAC 5-20-250	Repealed	19:23 VA.R. 3375	7/1/03
21 VAC 5-20-260	Amended	19:23 VA.R. 3375	7/1/03
21 VAC 5-20-270	Repealed	19:23 VA.R. 3375	7/1/03
21 VAC 5-20-280	Amended	19:23 VA.R. 3375	7/1/03
21 VAC 5-30-10	Amended	19:23 VA.R. 3379	7/1/03
21 VAC 5-30-40	Amended	19:23 VA.R. 3380	7/1/03
21 VAC 5-30-70	Repealed	19:23 VA.R. 3380	7/1/03
21 VAC 5-30-80	Amended	19:23 VA.R. 3380	7/1/03
21 VAC 5-30-90	Repealed	19:23 VA.R. 3380	7/1/03
21 VAC 5-40-30	Amended	19:23 VA.R. 3380	7/1/03
21 VAC 5-40-100	Amended	19:23 VA.R. 3381	7/1/03
21 VAC 5-40-120	Repealed	19:23 VA.R. 3381	7/1/03
21 VAC 5-40-140	Amended	19:23 VA.R. 3381	7/1/03
21 VAC 5-40-150	Amended	19:23 VA.R. 3381	7/1/03
21 VAC 5-40-160	Added	19:23 VA.R. 3381	7/1/03
21 VAC 5-45-10	Added	19:23 VA.R. 3381	7/1/03
21 VAC 5-45-20	Added	19:23 VA.R. 3381	7/1/03
21 VAC 5-80-40	Amended	19:23 VA.R. 3381	7/1/03
21 VAC 5-80-190	Amended	19:23 VA.R. 3382	7/1/03
21 VAC 5-80-200	Amended	19:23 VA.R. 3382	7/1/03
21 VAC 5-80-210	Amended	19:23 VA.R. 3384	7/1/03
21 VAC 5-100-10	Amended	19:23 VA.R. 3384	7/1/03
21 VAC 5-120-50	Erratum	19:22 VA.R. 3233	--
Title 22. Social Services			
22 VAC 30-20-10 through 22 VAC 30-20-40	Amended	19:14 VA.R. 2147-2154	4/24/03
22 VAC 30-20-60	Amended	19:14 VA.R. 2154	4/24/03
22 VAC 30-20-80	Amended	19:14 VA.R. 2154	4/24/03
22 VAC 30-20-90	Amended	19:14 VA.R. 2155	4/24/03
22 VAC 30-20-90	Amended	19:18 VA.R. 2736	6/18/03
22 VAC 30-20-95	Added	19:14 VA.R. 2155	4/24/03
22 VAC 30-20-100 through 22 VAC 30-20-130	Amended	19:14 VA.R. 2155-2164	4/24/03
22 VAC 30-20-150	Amended	19:14 VA.R. 2164	4/24/03
22 VAC 30-20-160	Amended	19:14 VA.R. 2164	4/24/03
22 VAC 30-20-170	Amended	19:14 VA.R. 2165	4/24/03
22 VAC 30-20-181	Amended	19:14 VA.R. 2166	4/24/03
22 VAC 30-20-200	Amended	19:14 VA.R. 2167	4/24/03
22 VAC 40-90-10	Amended	19:22 VA.R. 3218	9/19/03
22 VAC 40-220-10	Repealed	19:19 VA.R. 2882	7/2/03
22 VAC 40-220-20	Repealed	19:19 VA.R. 2882	7/2/03
22 VAC 40-293-10 emer	Added	19:19 VA.R. 2883	7/1/03-6/30/04
22 VAC 40-293-20 emer	Added	19:19 VA.R. 2883	7/1/03-6/30/04
Title 24. Transportation and Motor Vehicles			
24 VAC 30-280-20	Amended	19:16 VA.R. 2414	3/24/03
24 VAC 30-280-40	Amended	19:16 VA.R. 2415	3/24/03

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
24 VAC 30-280-50	Amended	19:16 VA.R. 2415	3/24/03
24 VAC 30-280-60	Amended	19:16 VA.R. 2416	3/24/03
24 VAC 30-480	Repealed	19:22 VA.R. 3219	8/13/03

NOTICES OF INTENDED REGULATORY ACTION

Symbol Key

† Indicates entries since last publication of the *Virginia Register*

TITLE 2. AGRICULTURE

STATE BOARD OF AGRICULTURE AND CONSUMER SERVICES

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Board of Agriculture and Consumer Services intends to consider promulgating regulations entitled **2 VAC 5-206, Regulation for Scrapie Eradication**. The purpose of the proposed regulation is to eradicate scrapie from Virginia sheep and goats. The agency invites comment on whether there should be an advisor appointed.

The agency intends to hold a public hearing on the proposed regulation after publication in the Virginia Register.

Statutory Authority: §§ 3.1-724, 3.1-726, and 3.1-730 of the Code of Virginia.

Public comments may be submitted until September 30, 2003.

Contact: David Cardin, DVM, Program Manager, Office of Veterinary Services, Department of Agriculture and Consumer Services, 1100 Bank St., Suite 608, Richmond, VA 23219, telephone (804) 786-4560, FAX (804) 371-2380 or e-mail dcardin@vdacs.state.va.us.

VA.R. Doc. No. R03-237; Filed June 26, 2003, 1:30 p.m.

TITLE 3. ALCOHOLIC BEVERAGES

ALCOHOLIC BEVERAGE CONTROL BOARD

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Alcoholic Beverage Control Board intends to consider amending regulations entitled **3 VAC 5-40, Requirements for Product Approval** and **3 VAC 5-70, Other Provisions**. The purpose of the proposed action is to carry out the mandate of Chapters 1029 and 1030 of the 2003 Acts of Assembly to establish regulations to implement the creation of wine and beer shippers' licenses. The proposed action will create the process for applying for such licenses, and establish the recordkeeping and reporting requirements for such licensees.

The agency intends to hold a public hearing on the proposed action after publication in the Virginia Register.

Statutory Authority: §§ 4.1-103 and 4.1-112.1 of the Code of Virginia.

Public comments may be submitted until September 10, 2003.

Contact: W. Curtis Coleburn, III, Chief Operating Officer, Department of Alcoholic Beverage Control, 2901 Hermitage Rd., Richmond, VA 23220, telephone (804) 213-4409, FAX (804) 213-4411 or e-mail wccolen@abc.state.va.us.

VA.R. Doc. No. R03-271; Filed July 10, 2003, 10:39 a.m.

TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

BOARD OF CRIMINAL JUSTICE SERVICES

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Criminal Justice Services intends to consider amending regulations entitled **6 VAC 20-180, Crime Prevention Specialists**. The purpose of the proposed action is to amend eligibility and certification requirements for crime prevention specialists.

The agency intends to hold a public hearing on the proposed regulation after publication in the Virginia Register.

Statutory Authority: §§ 9.1-102 and 9.1-161 of the Code of Virginia.

Public comments may be submitted until August 13, 2003.

Contact: Dan Gilmore, Criminal Justice Program Manager, Department of Criminal Justice Services, 805 E. Broad St., Richmond, VA 23219, telephone (804) 371-0635, FAX (804) 692-0948 or e-mail dgilmore@dcjs.state.va.us.

VA.R. Doc. No. R03-232; Filed June 12, 2003, 10:50 a.m.

TITLE 12. HEALTH

STATE BOARD OF HEALTH

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Board of Health intends to consider amending regulations entitled **12 VAC 5-585, Biosolids Use Regulations**. The purpose of the proposed action is to amend 12 VAC 5-585-500 to provide requirements that would permit biosolids field storage.

Notices of Intended Regulatory Action

The agency does not intend to hold a public hearing on the proposed regulation after publication in the Virginia Register.

Statutory Authority: § 32.1-164 of the Code of Virginia.

Public comments may be submitted until September 12, 2003.

Contact: C.M. Sawyer, Director, Division of Wastewater Engineering, Department of Health, 1500 E. Main St., Room 109, Richmond, VA 23219, telephone (804) 786-1755, FAX (804) 786-5567 or e-mail csawyer@vdh.state.va.us.

VA.R. Doc. No. R03-243; Filed July 11, 2003, 9:29 a.m.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Medical Assistance Services intends to consider amending regulations entitled **12 VAC 30-50, Amount, Duration, and Scope of Medical and Remedial Care Services**, and **12 VAC 30-80, Methods and Standards for Establishing Payment Rates; Other Types of Care**. The purpose of the proposed action is to expand school health services and modify the fee-for-service payments to school divisions by incorporating school division costs into the fee-for-services amounts paid to them.

The agency does not intend to hold a public hearing on the proposed regulation after publication in the Virginia Register.

Statutory Authority: §§ 32.1-324 and 32.1-325 of the Code of Virginia.

Public comments may be submitted until August 27, 2003, to Jeff Nelson, Policy and Planning Specialist, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

Contact: Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7959, FAX (804) 787-1680 or e-mail vsimmons@dmas.state.va.us.

VA.R. Doc. No. R03-251; Filed July 1, 2003, 3:49 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Medical Assistance Services intends to consider amending regulations entitled **12 VAC 30-60, Standards Established and Methods Used to Assure High Quality Care**, and **12 VAC 30-90, Methods and Standards for Establishing Payment Rates for Long-Term Care**. The purpose of the proposed action is to repeal provisions that provide special additional reimbursement to certain nursing facilities for adult specialized care services. Reimbursement for these services is now incorporated into the Nursing Home Payment System RUGs methodology.

The agency does not intend to hold a public hearing on the proposed regulation after publication in the Virginia Register.

Statutory Authority: §§ 32.1-324 and 32.1-325 of the Code of Virginia.

Public comments may be submitted until August 27, 2003, to Paula Margolis, Reimbursement Analyst, Division of Reimbursement, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

Contact: Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7959, FAX (804) 787-1680 or e-mail vsimmons@dmas.state.va.us.

VA.R. Doc. No. R03-250; Filed July 1, 2003, 3:51 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Medical Assistance Services intends to consider amending regulations entitled **12 VAC 30-70, Methods and Standards for Establishing Payment Rates; Inpatient Hospital Services**. The purpose of the proposed action is to amend the reimbursement methodology for inpatient hospitals with two separate changes: (i) inpatient capital costs are to be paid at 80% of allowable cost and (ii) reimbursement rates for freestanding psychiatric hospitals are to remain unchanged for FY 2004.

The agency does not intend to hold a public hearing on the proposed regulation after publication in the Virginia Register.

Statutory Authority: §§ 32.1-324 and 32.1-325 of the Code of Virginia.

Public comments may be submitted until August 13, 2003, to Scott Crawford, Director, Division of Reimbursement, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

Contact: Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7959, FAX (804) 787-1680 or e-mail vsimmons@dmas.state.va.us.

VA.R. Doc. No. R03-231; Filed June 13, 2003, 2:56 p.m.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Medical Assistance Services intends to consider amending regulations entitled **12 VAC 30-90, Methods and Standards for Establishing Payment Rates; Long-Term Care**. The purpose of the proposed action is to require a minimum holding period by the individual or small chain owner and seller of a nursing facility in order for the sale to result in the reimbursement of capital costs, after the sale, under the full Fair Rental Value methodology.

The agency does not intend to hold a public hearing on the proposed regulation after publication in the Virginia Register.

Statutory Authority: §§ 32.1-324 and 32.1-325 of the Code of Virginia.

Public comments may be submitted until September 10, 2003, to N. Stanley Fields, Director, Division of Cost Settlement,

Notices of Intended Regulatory Action

Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

Contact: Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7959, FAX (804) 787-1680 or e-mail vsimmons@dmas.state.va.us.

VA.R. Doc. No. R03-293; Filed July 18, 2003, 7:43 a.m.



TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD FOR ARCHITECTS, PROFESSIONAL ENGINEERS, LAND SURVEYORS, CERTIFIED INTERIOR DESIGNERS AND LANDSCAPE ARCHITECTS

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects intends to consider amending regulations entitled **18 VAC 10-20, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects Rules and Regulations**. The purpose of the proposed action is to make general clarifying changes to the regulation as well as clarify the board's requirements relating to "responsible charge" and "direct control and personal supervision." Other changes that may be necessary pursuant to the board's periodic review of its regulation, and any other changes, will also be considered.

The agency intends to hold a public hearing on the proposed regulation after publication in the Virginia Register.

Statutory Authority: §§ 54.1-201, 54.1-404, and 54.1-411 of the Code of Virginia.

Public comments may be submitted until August 27, 2003.

Contact: Mark N. Courtney, Executive Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514, FAX (804) 367-2475 or e-mail APELSCIDLA@dpor.state.va.us.

VA.R. Doc. No. R03-257; Filed July 2, 2003, 12:58 p.m.

BOARD FOR BARBERS AND COSMETOLOGY

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board for Barbers and Cosmetology intends to consider promulgating regulations entitled **18 VAC 41-30, Hair Braiding Regulations**. The purpose of the proposed action is to promulgate regulations to govern the licensure and practice of hair braiding as directed by Chapter 600 of the 2003 Acts of the Assembly.

The agency intends to hold a public hearing on the proposed regulation after publication in the Virginia Register.

Statutory Authority: § 54.1-201 of the Code of Virginia.

Public comments may be submitted until August 27, 2003.

Contact: William H. Ferguson, II, Executive Director, Board for Barbers and Cosmetology, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8590, FAX (804) 367-6295 or e-mail barbercosmo@dpor.state.va.us.

VA.R. Doc. No. R03-267; Filed July 8, 2003, 12:02 p.m.

BOARD FOR CONTRACTORS

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board for Contractors intends to consider amending regulations entitled **18 VAC 50-22, Board for Contractors Regulations, and 18 VAC 50-30, Tradesman Rules and Regulations**. The purpose of the proposed action is to adjust the licensing fees for contractors and tradesmen regulated by the Board for Contractors.

The agency intends to hold a public hearing on the proposed regulation after publication in the Virginia Register.

Statutory Authority: §§ 54.1-201 and 54.1-1102 of the Code of Virginia.

Public comments may be submitted until August 13, 2003.

Contact: Eric L. Olson, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2785, FAX (804) 367-2474 or e-mail olson@dpor.state.va.us.

VA.R. Doc. No. R03-241; Filed June 24, 2003, 1:40 p.m.

BOARD OF HEALTH PROFESSIONS

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Health Professions intends to consider adopting regulations entitled **18 VAC 75-40, Regulations Governing the Certification of Dialysis Care Technicians**. The purpose of the proposed action is to promulgate regulations to establish approval of certain certifying bodies that certify dialysis care technicians by training and examination.

The agency intends to hold a public hearing on the proposed regulation after publication in the Virginia Register.

Statutory Authority: § 54.1-2400 and Chapter 27.01 (§ 54.1-2729.1 et seq.) of Title 54.1 of the Code of Virginia.

Public comments may be submitted until August 13, 2003.

Contact: Elizabeth A. Carter, Ph.D., Executive Director, Board of Health Professions, 6603 W. Broad St., Richmond, VA 23230-1712, telephone (804) 662-7691, FAX (804) 662-9504 or e-mail elizabeth.carter@dhp.state.va.us.

Notices of Intended Regulatory Action

VA.R. Doc. No. R03-236; Filed June 20, 2003, 9:21 a.m.

BOARD OF MEDICINE

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Medicine intends to consider amending regulations entitled **18 VAC 85-20, Regulations Governing the Practice of Medicine, Osteopathy, Podiatry and Chiropractic**. The purpose of the proposed action is to increase fees as necessary to address the additional cost associated with compliance and implementation of HB1441 by the promulgation of permanent regulations to replace emergency regulations that are effective until July 14, 2004.

The agency intends to hold a public hearing on the proposed regulation after publication in the Virginia Register.

Statutory Authority: §§ 54.1-113 and 54.1-2400 of the Code of Virginia.

Public comments may be submitted until 5 p.m. on August 27, 2003.

Contact: William Harp, M.D., Executive Director, Board of Medicine, 6603 W. Broad St., Richmond, VA 23230-1712, telephone (804) 662-9908, FAX (804) 662-9943 or e-mail william.harp@dhp.state.va.us.

VA.R. Doc. No. R03-264; Filed July 8, 2003, 10:40 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Medicine intends to consider amending regulations entitled **18 VAC 85-20, Regulations Governing the Practice of Medicine, Osteopathy, Podiatry and Chiropractic, 18 VAC 85-40, Regulations Governing the Practice of Respiratory Care Practitioners, 18 VAC 85-50, Regulations Governing the Practice of Physician Assistants, 18 VAC 85-80, Regulations for Licensure of Occupational Therapists, 18 VAC 85-101, Regulations Governing the Licensure of Radiologic Technologists and Radiologic Technologists-Limited, 18 VAC 85-110, Licensed Acupuncturists, and 18 VAC 85-120, Regulations Governing the Certification of Athletic Trainers**. The purpose of the proposed action is to establish the standards of ethics by which practitioners of the healing arts must conduct their practice. The intent is to set forth by regulation the code of ethics, either by incorporation by reference or by adoption of a code assimilated from all professions of the healing arts.

The agency intends to hold a public hearing on the proposed regulation after publication in the Virginia Register.

Statutory Authority: Chapter 24 (§ 54.1-2400 et seq.) of Title 54.1 of the Code of Virginia.

Public comments may be submitted until 5 p.m. on August 27, 2003.

Contact: William Harp, M.D., Executive Director, Board of Medicine, 6603 W. Broad St., Richmond, VA 23230-1712, telephone (804) 662-9908, FAX (804) 662-9943 or e-mail william.harp@dhp.state.va.us.

VA.R. Doc. No. R03-263; Filed July 8, 2003, 10:40 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Medicine intends to consider amending regulations entitled **18 VAC 85-120, Regulations Governing the Certification of Athletic Trainers**. The purpose of the proposed action is to expand the current provisional certification to include persons who have applied for state certification and are otherwise qualified by virtue of holding certification from the National Athletic Trainers Association Board of Certification (NATABOC) but who are awaiting verifications of professional education, professional activity and licensure or certification in another state, if applicable.

The agency intends to hold a public hearing on the proposed regulation after publication in the Virginia Register.

Statutory Authority: §§ 54.1-2400 and 54.1-2957.4 of the Code of Virginia.

Public comments may be submitted until 5 p.m. on August 27, 2003.

Contact: William Harp, M.D., Executive Director, Board of Medicine, 6603 W. Broad St., Richmond, VA 23230-1712, telephone (804) 662-9908, FAX (804) 662-9512 or e-mail william.harp@dhp.state.va.us.

VA.R. Doc. No. R03-259; Filed July 3, 2003, 9:25 a.m.

BOARD OF NURSING

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Nursing intends to consider amending regulations entitled **18 VAC 90-20, Regulations Governing the Practice of Nursing**. The purpose of the proposed action is to increase the fee for initial licensure or renewal or reinstatement of licensure in order to have sufficient funding to implement legislation that made changes to the reporting and disciplinary requirements for nursing and legislation mandating the board's participation in the Nurse Licensure Compact beginning January 2005.

The agency intends to hold a public hearing on the proposed regulation after publication in the Virginia Register.

Statutory Authority: § 54.1-2400 of the Code of Virginia.

Public comments may be submitted until August 27, 2003.

Contact: Jay P. Douglas, R.N., Executive Director, Board of Nursing, 6603 W. Broad St., Richmond, VA 23230-1712, telephone (804) 662-9909, FAX (804) 662-9943 or e-mail jay.douglas@dhp.state.va.us.

VA.R. Doc. No. R03-260; Filed July 3, 2003, 9:25 a.m.

Notices of Intended Regulatory Action

BOARD FOR OPTICIANS

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board for Opticians intends to consider amending regulations entitled **18 VAC 100-20, Board for Opticians Regulations**. The purpose of the proposed action is to amend regulations to increase fees in accordance with the Callahan Act (§ 54.1-113 of the Code of Virginia).

The agency intends to hold a public hearing on the proposed regulation after publication in the Virginia Register.

Statutory Authority: §§ 54.1-113, 54.1-201 and 54.1-304 of the Code of Virginia.

Public comments may be submitted until August 27, 2003.

Contact: William H. Ferguson, II, Executive Director, Board for Opticians, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8590, FAX (804) 367-6295 or e-mail opticians@dpor.state.va.us.

VA.R. Doc. No. R03-265; Filed July 8, 2003, 12:01 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board for Opticians intends to consider amending regulations entitled **18 VAC 100-20, Board for Opticians Regulations**. The purpose of the proposed action is to amend regulations for registration for voluntary practice by out-of-state licensees in accordance with § 54.1-1701 of the Code of Virginia.

The agency intends to hold a public hearing on the proposed regulation after publication in the Virginia Register.

Statutory Authority: § 54.1-201 of the Code of Virginia.

Public comments may be submitted until August 27, 2003.

Contact: William H. Ferguson, II, Executive Director, Board for Opticians, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8590, FAX (804) 367-6295 or e-mail opticians@dpor.state.va.us.

VA.R. Doc. No. R03-269; Filed July 9, 2003, 11:32 a.m.

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Professional and Occupational Regulation intends to consider amending regulations entitled **18 VAC 120-40, Professional Boxing and Wrestling Event Regulations**. The purpose of the proposed action is to raise fees in accordance with the Callahan Act (§ 54.1-113 of the Code of Virginia).

The agency intends to hold a public hearing on the proposed regulation after publication in the Virginia Register.

Statutory Authority: § 54.1-831 of the Code of Virginia.

Public comments may be submitted until August 27, 2003.

Contact: Karen W. O'Neal, Deputy Director for Regulatory Programs, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8537, FAX (804) 367-2475 or e-mail oneal@dpor.state.va.us.

VA.R. Doc. No. R03-266; Filed July 8, 2003, 12:03 p.m.

TITLE 22. SOCIAL SERVICES

STATE BOARD OF SOCIAL SERVICES

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Board of Social Services intends to consider repealing regulations entitled **22 VAC 40-660, Child Day Care Services Policy**. The purpose of the proposed action is to repeal the current regulation pertaining to child care policy under the Child Care and Development Fund so that new regulations can be promulgated. New federal regulations and changes in policies in Virginia necessitate that new regulations replace the existing 22 VAC 40-660.

The agency does not intend to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 63.2-217, 63.2-319, 63.2-611, and 63.2-616 of the Code of Virginia, Child Care and Development Block Grant of 1990 as amended by the Personal Responsibility and Work Opportunity Act of 1996 (Public Law 104-193) and the Balanced Budget Act of 1997 (Public Law 105-33).

Public comments may be submitted until September 10, 2003.

Contact: Dottie Wells, Child Care Program Manager, Division of Child Care and Development, Department of Social Services, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1210, FAX (804) 692-2425 or e-mail dgw2@email1.dss.state.va.us.

VA.R. Doc. No. R03-291; Filed July 17, 2003, 10:06 a.m.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Board of Social Services intends to consider promulgating regulations entitled **22 VAC 40-661, Child Care Services**. The purpose of the proposed action is to promulgate new regulations for the Child Care and Development Fund (CCDF) program in Virginia. The Department of Social Services is the lead agency for the CCDF. The purpose of the Child Care and Development Fund is to increase the availability, affordability and quality of child care services.

Notices of Intended Regulatory Action

The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 63.2-217, 63.2-319, 63.2-611, and 63.2-616 of the Code of Virginia, Child Care and Development Block Grant of 1990 as amended by the Personal Responsibility and Work Opportunity Act of 1996 (Public Law 104-193) and the Balanced Budget Act of 1997 (Public Law 105-33).

Public comments may be submitted until September 10, 2003.

Contact: Dottie Wells, Child Care Program Manager, Division of Child Care and Development, Department of Social Services, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1210, FAX (804) 692-2425 or e-mail dgw2@email1.dss.state.va.us.

VA.R. Doc. No. R03-292; Filed July 17, 2003, 10:06 a.m.

PROPOSED REGULATIONS

For information concerning Proposed Regulations, see Information Page.

Symbol Key

Roman type indicates existing text of regulations. *Italic type* indicates proposed new text.
Language which has been stricken indicates proposed text for deletion.

TITLE 2. AGRICULTURE

PESTICIDE CONTROL BOARD

Title of Regulation: 2 VAC 20-30. Rules and Regulations Governing the Pesticide Fees Charged by the Department of Agriculture and Consumer Services Under the Virginia Pesticide Control Act (amending 2 VAC 20-30-20, 2 VAC 20-30-30 and 2 VAC 20-30-40).

Statutory Authority: § 3.1-249.30 of the Code of Virginia.

Public Hearing Date: October 16, 2003 - 9 a.m.

Public comments may be submitted until November 26, 2003.

(See Calendar of Events section for additional information)

Agency Contact: Marvin A. Lawson, Director, Pesticide Control Board, 1100 Bank Street, Room 401, Richmond, VA 23219, telephone (804) 786-3534, FAX (804) 786-5112, or e-mail mlawson@vdacs.state.va.us.

Basis: Section 3.1-249.30 of the Code of Virginia provides the discretionary authority for the regulation. Section 3.1-249.30 of the Code of Virginia authorizes the Pesticide Control Board (board) to promulgate regulations in regards to fees as follows: "...the Board may promulgate regulations... including but not limited to the following: ... 7. Establishing a fee structure for licensure, registration and certification to defray the costs for implementing this chapter." In addition, §§ 3.1-249.35, 3.1-249.36, 3.1-249.47, and 3.1-249-52 note the board's mandatory authority for promulgating a fee schedule in support of § 3.1-249.30.

Purpose: The proposed regulations set fees for (i) pesticide products offered for sale in the Commonwealth; (ii) commercial pesticide applicators providing pest control services to citizens of the Commonwealth; (iii) registered technician applicators providing pest control services to citizens of the Commonwealth; and (iv) pesticide businesses operating in the Commonwealth. In addition to the fee structure, these regulations establish renewal deadlines and late fees.

These regulations are essential to the health and welfare of Virginia citizens because (i) registration of pesticide products protects against extremely hazardous pesticides being sold to Virginia citizens or improperly labeled pesticides that can lead to human health problems, including death, if application, mixing, storing and disposal instructions are ambiguous or misleading; (ii) certification that pesticide applicators and registered technicians are properly trained so they may apply pesticides in a manner that will not harm the public or environment; and (iii) licensing of pesticide businesses to ensure that businesses that engage in the sale and or application of pesticides are aware of the potential hazards that pesticides pose to human health or the environment.

Substance: Substantive changes to existing sections include:

1. Deletion of language referring to earlier pesticide product registration fees that have subsequently become outdated thereby establishing a single pesticide product registration fee.
2. Establishment of a two-year certification period and fee for a commercial pesticide applicator's certificate and a biennial renewal fee.
3. Establishment of a fee for adding a category or subcategory to a pesticide applicator's certificate.
4. Establishment of a two-year certification period and fee for a registered technician's certificate and a biennial renewal fee.

Issues: The advantages of the amendments include (i) the regulation will be easier to read and understand for the industry and the regulators; (ii) the certification fee period and the certificate dates will coincide making it easier for the regulated community, public and the agency and reducing confusion for the regulated community and the public; and (iii) the regulated community will know the cost for adding a category or subcategory to their certificate.

There are no disadvantages to the public or the Commonwealth of Virginia.

Fiscal Impact: The projected cost to the state to implement and enforce the proposed amendment to 2 VAC 20-30-20 is neutral as the amendments solely clarify the current pesticide product registration fee of \$160 with expenditures being ongoing. Fund source/fund detail is 09/01. The budget activity is Pesticide Certification and Regulation Services in program 557 subprogram 04. The proposed amendment will affect pesticide registrants registering pesticides in the Commonwealth of Virginia, but will be cost neutral to them. During calendar year 2002, 1,036 pesticide registrants registered 12,731 pesticide products.

The projected cost to the state to implement and enforce the proposed amendments to 2 VAC 20-30-30 and 2 VAC 20-30-40 is a savings of \$10,500 with expenditures being ongoing. The projected savings come from the reduced administrative costs of renewing certificates every two years rather than every year. Fund source/fund detail is 09/01. The budget activity is Pesticide Certification and Regulation Services in program 557 subprogram 04. The proposed amendments will affect: (i) approximately 4,000 individuals making an initial application for certification annually as commercial applicators (1,000) and registered technicians (3,000) and (ii) approximately 200 commercial applicators making application annually to add a category or subcategory to their commercial applicator certificate. The proposed amendments will be cost neutral to both groups, as the certification period will increase to two years negating the requirement of renewing their certification and paying the renewal fee annually and current

regulations requiring a \$35 annual certification fee, respectively.

There is no anticipated fiscal impact on the Commonwealth of Virginia, localities, the agency or Virginia citizens other than those discussed above.

Department of Planning and Budget's Economic Impact Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007 H of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007 H requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

The Virginia Pesticide Control Board (board) proposes to: (i) delete obsolete language, (ii) double both the length of certification periods and the certification fees for commercial applicators and registered technicians, and (iii) clarify that adding a category or subcategory to certificates requires payment of a nonrefundable \$35 fee.

Estimated economic impact. Under the current regulations, commercial applicator certificates last one year and cost \$35. The board proposes to double both the certification period (to two years) and the certification fee (to \$70). Similarly, the board proposes to double the registered technician certification period from one year to two, and its associated fee from \$15 to \$30. The Department of Agriculture and Consumer Services (department) estimates that it will save \$10,500 per annum¹ in administrative costs by switching from one-year certifications to two-year certifications.

Commercial applicators and registered technicians who wish to remain certified for both years of the two-year period will send payment to the department totaling \$70 and \$30 per biennium, respectively, under both the current regulations and the proposed regulation. Individuals who wish to be certified for only one year may under the current regulations pay for only one year, but under the proposed regulations must pay for two years. These individuals will end up paying more under the proposed regulations than under the current regulations. For example, say a college student accepts a summer job that involves spraying pesticides. She applies for and obtains registered technician certification. She does not intend to work as a registered technician for more than one summer. Under the current regulations she pays a \$15 fee. Under the proposed regulations she must pay a \$30 fee that covers two years, even though she intends to use the certification for less than a year. According to the department, approximately 3,000 individuals apply for certification as registered technicians each year, while 1,888 apply for

¹ The Department of Agriculture and Consumer Services estimates that it will save \$7,000 in labor costs and \$3,500 in postage per annum.

certification renewal. These numbers imply that many registered technicians remain certified for only one year. For these individuals the proposed regulations effectively double their fees. Approximately 1,000 individuals apply for certification as commercial applicators each year, while 3,266 apply for certification renewal.² These numbers imply that most commercial applicators remain certified for at least two years.

All applicators and technicians will, every other year, pay fees one year sooner than they do under the current regulations. Paying fees one year sooner, even if it is the same amount, does produce a cost for the certificate holders. For example, those funds could have been held in a savings account or a certificate of deposit earning interest. If we assume that the certificate-holders can earn a five percent return, then certified commercial applicators could have earned \$1.75³ if they paid their \$35 fee one year later and the 6,000 registered technicians could have earned \$0.75⁴ if they paid their \$15 fee one year later. Thus, in essence, requiring that fees be paid one year earlier is equivalent to a small fee increase.

If we assume that the certificate-holders can earn a five percent return, then the 4,266⁵ certified commercial applicators could have earned a total of \$7,466⁶ if they paid their \$35 fee one year later and the 4,888⁷ registered technicians could have earned a total of \$3,666⁸ if they paid their \$15 fee one year later. That is a total of \$11,132⁹ in lost potential earnings for certificate holders due to paying fees one year earlier. Since the certificate holders pay fees one year early only every other year, the \$11,132 cost would be over two years. The \$11,132 cost is, of course, dependent on the assumption of a five percent return; a higher assumed return would result in cost higher than \$11,132, and a lower assumed return would result in cost lower than \$11,132.

Receiving fees one year earlier, even if it is the same amount, can produce additional revenue for the department. The department may, for example, put the funds in an interest bearing account. If we assume that the department can earn a five percent return, then the department can have \$11,132¹⁰ in additional funds every two years.

In summary, switching from one-year certifications to two-year certifications saves the department an estimated \$21,000 per biennium in administration costs and produces a transfer from certificate holders to the department. The loss in potential interest earned by certificate holders and the effective doubling in fees for individuals who only need to be certified for one year or less is all transferred to the department. In sum, this represents an implicit fee increase for pesticide applicator certificates. The department uses its fee revenue to

² Source: Department of Agriculture and Consumer Services

³ Calculation: $\$35 \times 0.05 = \1.75

⁴ Calculation: $\$15 \times 0.05 = \0.75

⁵ Calculation: 1,000 initial applicants + 3,266 renewal applicants = 4,266 certification applicants

⁶ Calculation: $\$35 \times 0.05 \times 4,266 = \$7,466$

⁷ Calculation: 3,000 initial applicants + 1,888 renewal applicants = 4,888 certification applicants

⁸ Calculation: $\$15 \times 0.05 \times 4,888 = \$3,666$

⁹ Calculation: $\$7,466 + \$3,666 = \$11,132$

¹⁰ Same calculations described in footnotes 5 through 9

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run its programs. Without the administrative cost savings and the implicit fee increase, the department would likely need to find revenue elsewhere.

The department charges \$35 to individuals who after having obtained commercial applicator certification apply to add categories or subcategories to their certificate. The fee is used to pay for administrative costs. The board proposes to add language describing this process.

Businesses and entities affected. The proposed regulations affect the approximate 4,266 certified commercial applicators and 4,888 registered technicians certified in the Commonwealth, as well as their employers and customers.

Localities particularly affected. The proposed regulatory amendments affect all Virginia localities.

Projected impact on employment. The proposed regulatory amendments are unlikely to significantly effect employment.

Effects on the use and value of private property. The proposed switch from one-year certifications to two-year certifications effectively produce a small loss in potential interest earned by certificate holders and doubles the fee paid by individuals who only need to be certified for a year or less.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The agency concurs, in principle, with the economic impact analysis submitted by the Department of Planning and Budget (DPB). However, the agency believes that the disadvantages of establishing a two-year certification period for commercial pesticide applicators and registered technicians are not as great as indicated by the DPB. For instance, in assuming a 5.0% rate of return, DPB states that commercial applicators and registered technicians could have earned \$1.75 and \$0.75, respectively, if they had paid their fees one year later. While DPB may have used historical averages to arrive at these projections, we note that a 5.0% rate of return has been practically nonexistent in recent years. Also not considered in DPB's analysis is the \$0.37 postage and the timesavings realized by commercial applicators and registered technicians who will not be required to prepare and submit an application for renewal of their certificates each year. The precedent for multiple year licensing is established in many areas. For example, a Virginia driver's license is valid for a five-year period. It is reasonable to assume that some percentage of those who receive a Virginia driver's license move out of state before the expiration of their driver's license.

Summary:

The existing regulations establish fees, renewal dates, and late fees for the registration of pesticides, certification of commercial applicators and registered technicians and licensing of pesticide businesses. The proposed amendments (i) delete obsolete references to pesticide product registration fees; (ii) establish certification periods and fees for commercial applicators and registered technicians; and (iii) establish fees for adding a category or subcategory to an existing commercial pesticide applicator's certificate.

2 VAC 20-30-20. Pesticide product registration fee; registration of new pesticide products; renewal of pesticide product registration.

A. Every pesticide product which is to be manufactured, distributed, sold, offered for sale, used or offered for use within the Commonwealth shall be registered with the commissioner. The fee for registering each brand shall be ~~\$140 for the product registration period beginning January 1, 1995; \$150 for the product registration period beginning January 1, 1997; and \$160 for the product registration period beginning January 1, 1999.~~ If a brand has more than one grade, each grade shall be registered, not the brand at the registration fee then in effect. The registration for a new pesticide product shall be effective upon receipt by the Department of Agriculture and Consumer Services of the application form accompanied by the required registration fee.

B. All pesticide product registrations shall expire on December 31 of each year unless canceled or otherwise terminated for cause. A registration not canceled or otherwise terminated for cause will be renewed upon receipt of the annual registration fee as set forth in subsection A of this section accompanied by the application renewal form. A registration that has been canceled or otherwise terminated for cause prior to December 31 may be resubmitted as a new registration when the conditions resulting in the cancellation or termination have been resolved. The registration of each brand or grade shall be renewed with the commissioner prior to December 31 of each year. If the registration is not renewed prior to December 31 of each year, the commissioner shall assess a late fee of 20% ~~which~~ *that* shall be added to the registration fee. The late fee shall apply to all renewal registrations submitted to the department any time during the 12-month period following the expiration of the registration. Registrants who permit a registration to lapse for more than one year shall thereafter register the product as a new product. The applicant shall pay the total fee prior to the issuance of the registration by the commissioner.

2 VAC 20-30-30. Commercial applicator certificate fee.

Any person applying for a certificate as a commercial applicator shall pay to the department an initial nonrefundable certificate fee of ~~\$35~~ \$70 and ~~an annual~~ *a biennial* nonrefundable renewal fee of ~~\$35~~—\$70 thereafter. All certificates shall expire at midnight on June 30 ~~of each~~ *in the second year after issuance* unless suspended or revoked for cause. All certificates not suspended or revoked for cause will be renewed upon receipt of the ~~annual~~ *biennial* renewal fee. If the applicator does not file an application for renewal of his certificate prior to COB June 30, the commissioner shall assess a late filing fee of 20% ~~which~~ *that* shall be added to the renewal fee. The applicant shall pay the total fee prior to the commissioner's issuance of the renewal. However, if the certificate is not renewed within 60 days following the expiration of the certificate, then such certificate holder shall be required to take another examination. The fee for this reexamination or for any commercial applicator reexamination pursuant to subsection C of § 3.1-249.52 of the Code of Virginia shall be ~~\$35~~—\$70 and shall be nonrefundable. *Any person applying to add a category or subcategory to his certificate shall pay to the department a nonrefundable fee of*

\$35. Federal, state, and local government employees certified to use, or supervise the use of, pesticides in government programs shall be exempt from any certification fees.

2 VAC 20-30-40. Registered technician certificate fee.

Any person applying for a certificate as a registered technician shall pay to the department an initial nonrefundable certificate fee of ~~\$15~~ \$30 and ~~an annual~~ a *biennial* nonrefundable renewal fee of ~~\$15~~ \$30 thereafter. All certificates shall expire at midnight on June 30 ~~of each~~ *in the second year after issuance* unless suspended or revoked for cause. A certificate not suspended or revoked for cause will be renewed upon receipt of the ~~annual~~ *biennial* renewal fee. If the application for renewal of any certificate is not filed prior to COB June 30, a late filing fee of 20% shall be assessed and added to the renewal fee and shall be paid by the applicant before the renewal shall be issued. If the certificate is not renewed within 60 days following the expiration of the certificate, then such certificate holder shall be required to take another examination. The fee for this reexamination or for any commercial applicator reexamination pursuant to subsection C of § 3.1-249.52 of the Code of Virginia shall be ~~\$15~~ \$30 and shall be nonrefundable. Federal, state and local government employees certified to use pesticides in government programs shall be exempt from any certification fees.

NOTICE: The forms used in administering 2 VAC 20-30, Rules and Regulations Governing the Pesticide Fees Charged by the Department of Agriculture and Consumer Services Under the Virginia Pesticide Control Act, are not being published due to the large number; however, the name of each form is listed below. The forms are available for public inspection at the Virginia Department of Agriculture and Consumer Services, 1100 Bank Street, Room 401, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS

Application for Virginia Pesticide Business License to sell, distribute, store, apply, or recommend pesticides for use, VDACS - 07209, eff. 2/02.

Commercial Pesticide Applicator Certification Application/Eligibility Requirements for Commercial Applicator Certification, VDACS - 07211, eff. 11/01.

Commercial Pesticide Applicator Request for Authorization to Take Pesticide Applicator Examination/Commercial Pesticide Applicator Categories, VDACS - 07218, eff. 11/01.

Application for New Pesticide Product Registration/Additional Information and Instructions, VDACS - 07208, eff. 8/02.

Application for Reciprocal Pesticide Applicator Certificate/Commercial Pesticide Applicator Categories, VDACS - 07210, eff. 07/00.

Pesticide Registered Technician Application/General Training Requirements for Registered Technicians, VDACS - 07212, eff. 11/01.

VA.R. Doc. No. R02-298; Filed July 17, 2003, 3:15 p.m.

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TITLE 4. CONSERVATION AND NATURAL RESOURCES

BOARD OF COAL MINING EXAMINERS

Title of Regulation: **4 VAC 25-20. Board of Coal Mining Examiners Certification Requirements (amending 4 VAC 25-20-20, 4 VAC 25-20-30, 4 VAC 25-20-40, 4 VAC 25-20-50, 4 VAC 25-20-70, 4 VAC 25-20-90, 4 VAC 25-20-100, 4 VAC 25-20-140, 4 VAC 25-20-190, 4 VAC 25-20-200, 4 VAC 25-20-210, 4 VAC 25-20-220, 4 VAC 25-20-250, 4 VAC 25-20-255, 4 VAC 25-20-259 and 4 VAC 25-20-390).**

Statutory Authority: §§ 45.1-161.28, 45.1-161.29, and 45.1-161.34 of the Code of Virginia.

Public Hearing Date: September 23, 2003 - 9:30 a.m.

Public comments may be submitted until 5 p.m. on October 11, 2003.

(See Calendar of Events section for additional information)

Agency Contact: Stephen A. Walz, Regulatory Coordinator, Department of Mines, Minerals and Energy, 202 N. Ninth Street, 8th Floor, Richmond, VA 23219-3402, telephone (804) 692-3211, FAX (804) 692-3237, or e-mail saw@mme.state.va.us.

Basis: The Board of Coal Mining Examiners Certification Requirements are promulgated at the discretion of Board of Coal Mining Examiners and are not federally mandated. However, the federal MSHA accepts state certification in lieu of establishing federal certifications.

The Board of Coal Mining Examiners derives its authority to promulgate this regulation from §§ 45.1-161.28, 45.1-161.29, and 45.1-161.34 of the Code of Virginia.

At § 45.1-161.28, the Board of Coal Mining Examiners shall have the power to promulgate regulations necessary or incidental to the performance of duties or execution of powers conferred under this title, which regulations shall be promulgated in accordance with the provisions of Article 2 of the Administrative Process Act.

At § 45.1-161.29, the Board of Coal Mining Examiners may require examination of applicants for certification but shall require certification of mine inspectors. Also, the board may require additional information as may be necessary to determine the competency and qualifications of candidates. The section requires qualifications for any certification and rules, conditions, and regulations for examinations.

At § 45.1-161.34, the Board of Coal Mining Examiners shall promulgate regulations establishing requirements for programs of continuing education for holders of certifications.

Purpose: These regulations are being amended as a result of periodic review. During this review, the Board of Coal Mining Examiners, with input from industry representatives and the DMME, found that minor edits were needed to bring the

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regulation up to date with the Code of Virginia and current industry standards.

During review of the regulation, the department asked the Board of Coal Mining Examiners to remove the condition from the regulation that required the division to mail certificate holders notices regarding pending continuing educational requirements. Because miners frequently move around to different companies, it is often difficult to pinpoint exactly where a particular miner is working or living. Placing the responsibility of monitoring certifications on the individual miner provides cost savings to the department and the taxpayers. This should result in a more effective and responsible pool of certified miners.

When administering examinations in a segmented format, a miner will be required to retake any "sections" failed on completion of all segments. This will represent a first retake of an examination. The regulation includes changes that allow certificate holders increased flexibility to meet continuing education requirements.

Regarding proposed regulatory requirements that outline reciprocal agreements, the workgroup chose to broaden the scope of the regulation to meet conditions set forth by the reciprocating party and the state of Virginia. It was decided that having broader reciprocating requirements would enable miners with specialized backgrounds the flexibility to use their skills in a wider range of locations.

Previously there was no requirement for recertification of underground shot firers. The board felt that the best alternative to this was to recertify these individuals every five years and to require proof of experience, examination, or continuing education.

Underground electrical repairman requirements would exclude performing electrical work at surface locations. This is because the responsibilities vary considerably for underground and surface electricians.

Hoisting engineers will be recertified every five years and the hoisting engineer will be required to prove that they have been performing hoisting duties in their work or pass a practical demonstration of their skills.

Advanced first aid certification needed a clear date when the certification expired as opposed to the current language.

In the current regulation, instructors were not explicitly required to use equipment that was necessary to teach advanced first aid. Some instructors were teaching without this equipment. The proposed regulation requires instructors to use any specialized equipment to help reinforce their teaching.

Miners will be required to have a practical knowledge of mine gases. This will provide more thorough mine gas monitoring.

In the current regulation addressing general coal miner certifications, there was no clear distinction between job responsibilities at surface and underground mines. For clarity, the regulation is being amended to ensure that surface miners without underground mining experience are not working underground without the required training and knowledge.

Not all instructors that teach Board of Coal Mining Examiners training and continuing education courses are certified in the areas they teach. In addition the students are not given the opportunity to critique the instructors' teaching effectiveness. Therefore the regulation is being amended to ensure the instructor is knowledgeable and able to effectively teach the required courses.

The goals of the agency are to ensure through examination and certification of persons working on coal mines, the safest environment for workers employed at coal mines without restricting productivity or efficiency. The regulation is necessary in that it establishes procedures and standards of certification for miners and workers in areas of specific responsibilities at coal mines.

Substance: 4 VAC 25-20-20 through 4 VAC 25-20-220: Specific sections relating to the mailing and receiving of notifications to certificate holders are being amended. The recommendation to not mail notices was proposed and accepted by the Board of Coal Mining Examiners because many miners do not leave a forwarding address when they move or leave a job. In many instances hundreds of notification mailings are sent, only to be returned to the department unopened. This results in wasted costs to the department and the public. The board agreed that the operators and the DMME would benefit if they made available the information on a requested basis, leaving maintenance notices for certifications up to the responsible individuals. This information can also now be checked on DMME's Internet site.

4 VAC 25-20-20 E is being amended to be consistent with changes in the Code of Virginia. The code does not specify any particular form of payment.

4 VAC 25-20-30 F is being amended so that an applicant only must retake the failed "sections" of the exam segment as opposed to the entire examination. The miner would take the first, second, and third segment of the exam. The sections that are failed from each segment are combined for the second retake. If the section retake is failed, the miner would then have to retake the entire examination on the third attempt. If any section is failed during the third attempt, the applicant must wait a year from the date of the first attempt to restart the examination process.

4 VAC 25-20-40 is being amended to broaden the scope of the reciprocal agreements and to meet conditions set forth by reciprocating parties and the state of Virginia. This would be for electrical repairmen, mine foremen, and for advanced first aid.

4 VAC 25-20-90 is being amended to recertify underground shot firers every five years and for applicants to provide proof of experience, pass examinations, or participate in continuing education.

4 VAC 25-20-100 is being amended to address the differences in responsibilities between surface and underground electrical repairman. Underground electrical repairman requirements would exclude performing electrical work at surface locations. This is consistent with current federal MSHA standards.

4 VAC 25-20-140 is proposed to have hoisting engineers be recertified every five years and for the hoisting engineer to prove that they have been performing hoisting duties in their work or pass a practical demonstration of their skills.

4 VAC 25-20-210 is being amended to provide a clear date when the advanced first aid certification would expire.

4 VAC 25-20-220 is being amended to require instructors to use equipment that is necessary to teach advanced first aid and first aid techniques.

4 VAC 25-20-250 is being amended to require the applicant to demonstrate a practical knowledge of mine gases in addition to knowing how to operate gas monitoring equipment.

4 VAC 25-20-255 is being amended so there is a clear distinction between required skills that qualify general coal miners to work at surface or underground mines. A miner with a surface certification is not certified to work underground, but a miner with an underground certification may work at the surface.

4 VAC 25-20-259 is being amended to ensure that Board of Coal Mining Examiners instructors are knowledgeable of mines and mining and able to effectively teach continuing education and training courses. The changes also allow students to critique the instructor's effectiveness.

4 VAC 25-20-390 is being amended to address on site investigations by mine inspectors. An inspector would choose ten questions from a pool of questions that relate to the violations found at the mine rather than randomly picking questions that would be unrelated to the violations at the mine.

Issues: This regulation presents advantages and disadvantages to the regulated community. There are advantages that provide for alternative methods of payment for application fees. A disadvantage to the public and the regulated community is that the division will no longer mail certification expiration notices to businesses and individuals that require that the division search to find the individual. The notice will only be sent to the last known address.

One advantage to the miner is that certification on some exams may be segmented as opposed to taking the entire exam at one setting. Any sections failed during a segment will be retaken at the completion of the process.

Also, the regulation addresses the requirements for certification of reciprocal agreement with other states.

For shot firers and hoisting engineer certificate holders, an added advantage to the mining community includes the option for the certificate holder to recertify in most cases by testing, continuing education, or proof of experience. Student choosing to maintain certification by retesting shall meet all requirements of initial certification except work experience will not have to be resubmitted.

An advantage to the regulated community is the requirement that certification instructors have equipment necessary to conduct miner training. This can become a disadvantage to various instructors because some may be required to acquire the equipment. In addition, miners that undergo training will be

able to critique their instructors. This should provide an advantage to the regulated community because feedback from students generally encourages improved instructor skills, thus ensuring better training provided to the industry.

Lastly, when mine inspectors give on-site examinations to mine foremen, the questions asked to the examinee will be drawn from a pool of questions as opposed to the inspector writing out the questions when there is a violation or condition that warrants the action. This should be advantageous to the inspector administratively and may reduce any potential stress between the inspector and the foreman related to the examination or the violation.

Fiscal Impact:

A. The projected cost to the state to implement and enforce the proposed regulation:

1. This would require a projected 28 hours by DMME to make needed changes to the computer system: $\$40 \times 28 = \$1,120$.

2. Design forms - two forms @ $\$125 = \250 .

3. Notifications of requirement change (both certifications) $3912 \times .37 = \$1,337.44$ (for mailing).

4. Projected Hoisting Engineer estimate: 10% to renew; 69 x 10 minutes for each input/process; 11.5 hours and Shot Firers estimate 10% to renew; 1070 x 10 minutes for each input/process 18.0 hours. Clerical cost $\$13.50/h \times$ (approx) 30 hours (for both certifications) = $\$405$. Note: Staff in place to implement.

5. Training Development time one hour for 40 field personnel @ $\$36/hr = \$1,440$.

a. Fund Source/Fund Detail: General Fund; 0100

b. Budget Activity: 55503

c. One-time cost vs. on-going expenditures: Minimal to issue renewals

B. The projected cost of the regulation on localities: No cost to localities.

C. A description of the individuals, businesses or other entities that likely are to be affected by the regulation:

1. Certified Shot Firers, Hoisting Engineers and mine operators that require the services of these employees

2. Trainers will be required to purchase training equipment if they do not have it presently.

D. The agency's best estimate of the number of such entities that will be affected:

1. Hoisting Engineers: 345 (presently certified), it is estimated that 10% will recertify.

2. Shot firer: 3567 (presently certified), it is estimated that 10% will recertify.

3. Trainers: less than 10

E. The projected cost of the regulation for affected individuals, businesses, or other entities:

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1. We have projected approximated 1139 (10% of each category) would require training (if training is an option for renewal - training should be no more than 2 hours). 1139 x \$20 = \$2,780 for retraining cost.

2. Cost to mail certification if 1139 re-certified: 1139 x .37 = \$421.43

Department of Planning and Budget's Economic Impact

Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007 of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the proposed regulation. The General Assembly allows the Board of Coal Mining Examiners (BCME) in § 45.1-161.28 of the Code of Virginia to promulgate regulations requiring certification of persons who work in coal mines and persons whose duties and responsibilities in relation to coal mining require competency, skill, or knowledge in order to perform their task in a manner that protects the health and safety of persons and property. Section 45.1-161.29 of the Code of Virginia allows the BCME to require examination of all applicants for certification. Section 45.1-161.34 of the Code of Virginia requires that BCME promulgate regulations establishing requirements for programs of continuing education for holders of certification.

The proposed regulation (i) broadens the scope of reciprocity agreements to include conditions set by the reciprocating party and the state of Virginia, (ii) requires all underground shot firers and hoisting engineers to be recertified every five years, (iii) amends the existing regulation to exclude certified underground electrical repairmen from performing electrical work at surface locations, (iv) requires all individuals seeking to get a gas detection qualification to demonstrate practical knowledge of mine gases in addition to taking the gas detection examination and demonstrating proper use of gas detection equipment, (v) requires advanced first-aid instructors to use materials and training aids necessary to deliver the required skills and training, (vi) includes additional requirements to be met by Board of Coal Mining Examiners instructors who teach initial training and continuing education courses, (vii) changes the length of time for which initial advanced first-aid certification is valid, and (viii) removes a stipulation from the existing regulation that requires the Division of Mines to mail notices to certificate holders regarding continuing education and other requirements to be met in order to keep their certification valid.

The proposed regulation includes a number of administrative changes. The process of appearing for a segmented examination (such as the underground mine foreman and electrical repairman examinations that allow each segment to

be taken separately) has been streamlined by requiring that a person retake any failed sections of the examination only after completing the first take of all segments. Notification requirements to be met by the Department of Mines, Minerals, and Energy (DMME) regarding the suspension or revocation of certification have been changed. Instead of mailing out a list of individuals whose certification has been suspended or revoked to all employers, DMME will now be required to provide the list only upon request. Prospective employers can also obtain the list by logging onto the DMME website.

The proposed regulation includes changes that make the existing regulation consistent with changes in the Code of Virginia. It also includes clarifying language such as specifically stating that individuals certified as general coal miners can work on the surface or underground depending on whether they are certified as surface or underground coal miners.

Estimated economic impact.

1. The proposed regulation broadens the scope of reciprocity agreements to include conditions set by the reciprocating party and the state of Virginia. Under current policy, DMME grants certification to individuals who are certified in states that accept Virginia certification and are applying for reciprocity in Virginia. Certification is granted without requiring the applicant to take and pass the certification examinations, other those sections relating to Virginia law. However, according to DMME, differences in certification requirements and state laws have led to problems with some out-of-state miners operating in Virginia. The proposed change will allow states to negotiate reciprocity agreements in order to take into account the differences in state law. Specifically, DMME believes that where significant differences exist between states in the certification requirements for mine foremen, advanced first-aid training, and various electrical categories, the proposed regulation establishes additional requirements to be met before reciprocal certification is granted. Applicants for mine foreman reciprocity will be required to take the mining law and mine record sections of the Virginia certification examination, applicants for advanced first-aid reciprocity who hold a mine emergency technician certification from another state will be required to undertake additional training relevant to Virginia, and applicants for electrical reciprocity will be required to take the practical and mine electrical records sections of the Virginia certification examination. The regulation also allows additional requirements to be imposed on reciprocal certification in categories other than those mentioned above.

The proposed change is likely to make it more difficult to get certified through reciprocity, especially as a mine foreman, in advanced first-aid, and under the various electrical categories. This could discourage out-of-state miners from applying for reciprocal certification in Virginia and reduce the number of out-of-state miners working in Virginia. In 2002, nine out of 46 initial certifications issued to mine foreman, 17 out of 105 initial certifications issued for advanced first-aid, and seven out of 57 initial certifications issued for various electrical categories were done under reciprocity. Based on basic economic theory and evidence, fewer out-of-state miners working in Virginia would reduce competition and raise wage

levels in Virginia. However, a slack labor market and widespread unemployment in the coal mining industry are likely to limit the likelihood of any increase in wage levels in the short-run. If other states respond by imposing additional conditions on miners certified in Virginia and applying for reciprocal certification, Virginia miners are likely to find it more difficult to get certified in those states, reducing their mobility and ability to work outside Virginia. However, to the extent that requiring out-of-state miners to meet certain Virginia-specific requirements reduces the risk to public health and safety and the environment from their activities, it will produce economic benefits. The net economic impact will depend on whether the benefits of having out-of-state miners familiar with Virginia-specific rules and regulations outweigh the costs of reducing competition (and raising wages) and the ability of Virginia miners to work outside the state.

2. The proposed regulation requires certified underground shot firers and hoisting engineers to be recertified every five years. Under current policy, underground shot firers and hoisting engineers are certified for life. DMME believes that advances in technology and the attrition of skills over time make recertification necessary. Moreover, according to DMME, a large proportion of those currently certified as underground shot firers and hoisting engineers are not actively engaged in these activities. With the coal mining industry shrinking in Virginia, many individuals formerly employed by the industry have moved to other unrelated jobs. Thus, in order to ensure that certified underground shot firers and hoisting engineers keep their skills up-to-date, especially in the case of individuals no longer working in the coal mining industry, DMME believes it is essential to require recertification. To be recertified, underground shot firers will have to present proof of having performed activities related to their certification in two of the last three years preceding expiration, present verification of having completed an underground mine foreman or other continuing education that includes safety training in underground blasting, or retake and pass the underground shot firer examination. Hoisting engineers will be required to either present proof of having performed activities related to their certification in two of the last three years preceding expiration or retake and pass the practical demonstration section of the hoisting engineer examination.

According to DMME, currently there are 3,567 certified underground shot firers and 346 certified hoisting engineers. Based on factors such as the secular decline in coal mining jobs in Virginia in the last decade and the current age of some of the certificate holders, DMME expects approximately 10% of certificate holders to recertify. No fees will be charged for recertification.

The proposed change is likely to have a net positive economic impact. Underground shot firers and hoisting engineers who have been active in their profession will face a small additional burden of providing written proof that they have been engaged in these activities in two of the last three years. Individuals who have not been active as underground shot firers and hoisting engineers will face a more significant burden of retaking and passing the required examination or enrolling in the required continuing education classes. However, individuals who have not been active in their profession are

more likely not to have kept their skills current and thus pose the greater threat to public health and safety and to the environment. Thus, the proposed change will have a net positive economic impact to the extent that it ensures that individuals operating as underground shot firers and hoisting engineers have the skills required to do their job in a manner that is protective not only of their fellow miners but also of public health and safety and the environment. However, it should be kept in mind that most coal mining businesses probably find it in their interest to have highly qualified individuals working in areas where hazards from coal mine accidents can be catastrophic. Thus, the extent of the positive economic impact will be limited by the fact that these minimum standards may not be binding in most cases as firms would hire underground shot firers and hoisting engineers who have been active in their profession even if they were not required to do so.

3. The proposed regulation amends the existing regulation to exclude underground electrical repairmen from performing electrical work at surface locations. Currently, individuals certified as underground electrical repairmen can work at both surface and underground locations. However, the current certification requirements for underground repairmen do not meet federal minimum safety standards for performing electrical work at surface locations. Thus, the proposed change is intended to make the regulation consistent with federal minimum safety standards. According to DMME, currently there are 4,740 certified underground electrical repairmen.

There is no data available at this time on the number of accidents caused by underground electrical repairmen working at surface locations. To the extent that federal minimum safety standards do provide some additional safety benefits compared to existing policy, the proposed change will have some economic benefits. It will reduce the risk to other miners and to public health and safety and the environment from underground electrical repairmen performing repairs at surface locations. If, on the other hand, there are no significant additional benefits from meeting federal minimum safety standards, the proposed change will only serve to reduce the flexibility of underground electrical repairmen to work at both surface and underground locations. In order to perform work at surface locations, they will now have to obtain certification as surface electrical repairmen or become certified as an electrical maintenance foreman. The net economic impact of the proposed change will depend on whether the additional benefits of meeting federal minimum safety standards outweigh the additional costs incurred by requiring underground electrical repairmen to get an additional certification in order to perform repairs at surface locations. The lack of data and studies at this time on the additional benefits of meeting federal safety standards over existing standards makes it impossible to determine whether the proposed change will have a net positive or a net negative economic impact.

4. The proposed regulation imposes an additional requirement on individuals seeking a gas detection qualification. In addition to taking the gas detection examination and demonstrating proper use of gas detection equipment, they will now be required to demonstrate a practical knowledge of

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mine gases. The required practical knowledge and the conditions for passing the practical examination are listed in a guidance document made available by DMME.

Following the 1992 mine explosion in a mine near Norton, Virginia that resulted in eight fatalities, changes to the Code of Virginia have tightened gas detection guidelines and requirements. DMME believes that taking the gas detection examination and demonstrating proper use of gas detection equipment alone is not adequate to prepare miners for working in mines and that practical knowledge of mines gases is essential for thorough gas monitoring.

The proposed change will affect individuals seeking to obtain a gas detection qualification. According to certification requirements specified in the regulation, individuals seeking certification under any category other than as a surface blaster, as an instructor, or for advanced first-aid are required to have taken and passed the gas detection examination. In 2002, 519 out of 1,555 applicants were required to take the gas detection examination. The practical examination will be conducted at no additional cost to applicants.

According to data published by the Mine Safety and Health Administration (MSHA), since 1970 there have been 16 coal mine disasters (mine accidents that claim five or more lives), of which 11 were due to an explosion in the coal mine. Moreover, according to MSHA, a major hazard associated with the mine explosions is the accidental ignition of coal dust and mine gases such as methane. Methane emission rates are often unpredictable because the interactions between geologic characteristics, mining and ventilation practices, and methane control systems vary considerably due to site-specific conditions. Thus, requiring miners to have a practical knowledge of mine gases is likely to reduce the risk of a catastrophic mine accident.

The proposed change is likely to have net a positive economic impact. Individuals with a practical knowledge of mine gases will face a small additional burden of demonstrating that they possess the requisite knowledge. Individuals without the requisite knowledge will face a more significant burden of taking and passing an examination testing their practical knowledge of the mine gases. However, by not having the required knowledge to perform their jobs in a safe and secure manner, these individuals also pose the greatest threat to mine safety and to the safety and health of the public and the environment. Thus, the proposed change will have a net positive economic impact to the extent that it reduces the number of under-qualified individuals operating in coal mines and thus reduces the risk posed to other miners and to public health and safety and the environment from their activities. However, it should be kept in mind that most coal mining businesses probably find it in their interest to have highly qualified individuals working in areas where the consequence of coal mine accidents can be catastrophic. Thus, the extent of the positive economic impact will be limited by the fact that most firms would choose to hire mine workers with a practical knowledge of mine gases even if they were not required to do so.

5. The proposed regulation requires advanced first-aid instructors to use materials and training aids necessary to deliver the required skills and training. While DMME provides

a guidance document listing recommended apparatus to be used in advanced first-aid training classes, the existing regulation does not explicitly require it. Consequently, according to DMME, some instructors were ignoring DMME's recommendation and were teaching advanced first-aid without the necessary equipment. By explicitly requiring the use of equipment and materials recommended by DMME, the proposed change intends to close the existing loophole. According to DMME, the change will affect approximately 10 currently certified advanced first-aid instructors not using the required equipment. Moreover, DMME estimates that it may cost them up to \$1,500 to purchase the necessary equipment and materials.

The American Red Cross offers a number of Occupational Safety and Health Administration (OSHA)-recognized advanced first-aid courses that have been adapted to meet the needs of different work environments. These include CPR training for professional rescuers, emergency response training, and training in the use of automatic external defibrillators. The demonstration and use of equipment such as breathing devices, resuscitation masks, and defibrillators are considered an essential part of these courses and necessary in order to impart the required skills.

The proposed regulation makes it mandatory for instructors teaching advanced first-aid to use necessary equipment and materials. Instructors currently using the required equipment will be unaffected by the proposed change. Only instructors not using the required equipment will have to incur additional costs in purchasing the equipment. However, by providing inadequate advanced first-aid training, these instructors also pose the greatest risk to the safety of mine workers and to public health. By reducing the number of advanced first-aid instructors providing sub-standard training, the proposed regulation will ensure that students coming out of these classes are better trained to provide first-aid. The net economic impact of the proposed change will depend on whether the benefits of having miners better trained in advanced first-aid outweigh the costs of ensuring that they do. There are no studies or data available at this time on the benefits of providing first-aid training and/or different levels of first-aid training to coal miners. However, just one case of a life saved because of better first-aid training provided to miners would be enough to justify the increased costs.

6. The proposed regulation includes additional requirements to be met by BCME certified instructors conducting initial training and continuing education courses. Individuals not certified in the areas that they are teaching will, if required, need to submit to a DMME review of the material they plan to teach. All BCME certified instructors will also be required to provide students with evaluation or critique forms. DMME has received complaints about the effectiveness of instructors, especially concerning instructors not certified in the areas they teach and advanced first-aid instructors not using necessary equipment. The proposed change is intended to improve the teaching performance of BCME instructors. Currently, there are 95 certified advanced first-aid instructors and 91 certified BCME instructors operating in Virginia.

The proposed change will affect only those instructors not providing training that meets required standards. Sub-

standard training could result in under-qualified individuals working in coal mines and thus increase the risk they pose to their fellow miners and to the public and the environment in general. To the extent that the proposed change reduces the number of instructors providing substandard training, it is likely to result in better-trained coal miners and is thus likely to have a positive economic impact. Moreover, requiring instructors to provide students with evaluation forms will increase feedback and provide all instructors, not just substandard instructors, with the opportunity to improve their teaching performance and effectiveness. The net economic impact will depend on whether the benefits provided by the regulation in terms of more effective instructors and better-trained coal miners outweigh the costs associated with implementing the proposed change. There is no data available at this time that would allow us to determine the cost effectiveness of having DMME review teaching material of instructors not certified in the areas they teach and of having instructors provide students with evaluation forms.

7. The proposed regulation changes the length of time for which initial advanced first-aid certifications are valid. Under the existing regulation, an initial advanced first-aid certification expires at the end of the year in which the certification was issued. Under the proposed regulation, the certification will expire one year from the month in which it was granted. The proposed change will affect all applicants for initial certification in advanced first-aid. In 2002, DMME received 105 applications for initial certification in advanced first-aid.

The proposed change will have a small net positive economic impact. It will give all individuals with initial certification in advanced first-aid a full year before getting recertified. Under current policy, individuals obtaining initial certification in the second half of the year have less time before getting recertified than individuals obtaining initial certification in the first half of the year. Thus, the proposed change will give all individuals the same amount of time in which to get recertified regardless of the time of the year the certification was issued. Moreover, the proposed change is also likely to reduce the processing time for recertification applications by spreading out recertification requests over the year. According to DMME, under the existing regulation DMME was deluged with applications for recertification over Christmas and New Year.

8. The proposed regulation removes a stipulation from the existing regulation that requires the Division of Mines to mail notices to certificate holders regarding continuing education and other requirements in order to keep their certification valid. According to DMME, coal miners tend to move around a lot, both within the state and across state lines, and tend not to update their mailing address very frequently. In the past, approximately 60% of notices mailed to certificate holders have been returned. The proposed change will put the onus of meeting requirements for keeping their certification valid on the certificate holders themselves. Information regarding recertification will be made available on the DMME website.

The proposed change is likely to have a net positive economic impact. It will provide some cost savings to DMME by not requiring them to mail out notices to all certificate holders. For the approximately 40% of certificate holders who did receive notices through the mail, information regarding continuing

education and other requirements to keep certification up-to-date will continue to be available at the DMME website, which is accessible from any public library and any computer connected to the internet.

Individuals working in the coal mining industry can create potentially serious public safety and environmental hazards from conducting their activities in an improper or inappropriate manner. The aim of the certification program is to enforce certain compulsory minimum standards for persons employed in the coal mining industry and to reduce the risk to public health and safety and the environment from their activities. According to DMME, fees charged to issue coal mining certifications cover approximately 10% of the costs of running the program. DMME charges applicants no fees other than a \$10 examination fee. The cost of obtaining a certification can be viewed as part of the compliance cost incurred by an individual to ensure that the risk to public health and safety and the environment is minimized. Given that current revenues cover only 10% of the cost of the program, individuals certified as coalminers are not paying the actual compliance cost associated with their activities. Putting the onus of keeping the certification valid on certificate holders themselves transfers some of the costs of the certification from DMME to the certificate holders.

Transferring the cost will have a positive economic impact and result in more efficient use of resources. With some of the cost being subsidized by DMME, and hence the taxpayers, individuals operating in the coal mining industry are not paying costs commensurate with the risk posed to public health and safety and the environment from their activities. This could potentially result in many more unsuitable and unqualified individuals entering the industry than if certification fees better reflected actual costs or running the certification program. Thus, transferring more of the cost of certification to the certificate holders will ensure that individuals entering the industry are of a certain quality and the risk to public health and safety and the environment from their activities is kept at a level deemed appropriate.

Businesses and entities affected. The proposed regulation will affect all individuals and businesses involved in the coal mining industry.

Individuals certified outside Virginia now have to meet additional requirements before being granted reciprocal certification in Virginia. Broadening the scope to reciprocity agreements could potentially reduce the number of out-of-state miners coming to work in Virginia, which in turn could reduce competition and raise wage levels in Virginia (in 2002, 50 miners applied for reciprocity in Virginia). If other states also decide to impose additional conditions on reciprocity, it could make it harder for Virginia miners to work outside the state. 3,567 certified shot firers and 346 hoisting engineers will be required to get recertified every five years. 4,740 certified underground electrical repairmen will no longer be allowed to work at surface locations. Individuals requiring a gas detection qualification as a condition for certification (all categories of certification other than surface blasters, BCME instructors, and advanced first-aid training require a gas detection qualification) will now have to demonstrate a practical knowledge of mine gases in addition to existing

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requirements (in 2002, 519 out of 1,555 applicants were required to take the gas detection examination). Advanced first-aid instructors will be required to use equipment and materials necessary to imparting the required first-aid skills (DMME estimates approximately 10 currently certified advanced first-aid instructors will be affected). BCME certified instructors (95 advanced first-aid instructors and 91 BCME certified instructors) will be required to meet some additional requirements in order to maintain their certification as instructors. Initial advanced first-aid certificate holders will have a full year before applying for recertification (in 2002, DMME received 105 applications for initial certification in advanced first-aid).

Localities particularly affected. The proposed regulation will affect all localities in Virginia. However, localities dependent on the coal mining industry will be particularly affected.

Projected impact on employment. The proposed regulation may have a small negative impact on employment. The result of modifying the reciprocity clause could eventually result in other states making similar modifications and thus making it harder for Virginia miners to work outside the state. Moreover, additional conditions such as requiring individuals applying for the gas detection qualification to demonstrate a practical knowledge of mine gases are likely to make it more difficult for individuals to be certified under certain categories of coal mining certification.

Effects on the use and value of private property. The proposed regulation could increase the cost of operating in the coal mining industry. Broadening the reciprocity clause to include additional requirements could restrict the number of out-of-state miners operating in Virginia, potentially reducing competition and raising wages in Virginia. However, given slack labor market and widespread unemployment in the coal mining industry, the extent of any wage rise is likely to be limited. Moreover, provisions in the proposed regulation such as not allowing underground electricians to work at surface locations could make it more expensive for businesses to hire individuals certified in certain categories. Thus, the proposed regulation could potentially raise the costs of operation and lower the asset value of private firms engaged in coal mining.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Department of Mines Minerals and Energy in general concurs with the Department of Planning and Budget's Economic Impact Analysis statement for DMME's Board of Coal Mining Examiners Certification Requirements, 4 VAC 25-20.

DMME believes that the finding in the Estimated Economic Impact section that the new requirements governing reciprocity of certified persons would decrease the number of available persons with certifications and thereby cause wage increases is based on economic conditions that are not be found in the southwestern Virginia, eastern Kentucky, and southern West Virginia labor market.

Without the new certification requirements governing reciprocity, Virginia would no longer be able to accept reciprocal certifications from neighboring states. The agency has found that persons with reciprocal certification do not have the required knowledge of Virginia's Coal Mine Safety

Act and reporting requirements to safely serve as certified foremen, electricians, and in advanced first aid. No longer accepting any reciprocal certifications would decrease the pool of available certified persons. Therefore, the option DMME has selected for reciprocal certifications will serve to increase reciprocal certifications and have the opposite effect of what was considered in the Economic Impact Analysis.

Additionally, wages for certified persons are affected by many factors. Other factors such as prevailing wages for other jobs in the area and mining wages paid in the southwest Virginia, West Virginia and Kentucky labor market would more than offset any affect the proposed certification regulation would have on wages.

The Localities Particularly Affected section states that the proposed regulation will affect all localities in Virginia. The businesses affected by the regulation are located in seven coal producing counties in southwest Virginia. The proposed regulation should therefore not affect all counties or localities in the Commonwealth.

The Projected Impact on Employment section concludes that the regulation could have a negative impact on employment in Virginia's coal mining industry. The proposed reciprocal certification requirements will enhance mine safety and health and increase productivity. Accidents cause considerable loss in productivity and increased costs to mine operators. These increased costs due to accidents have caused mines to close. Actions to reduce accidents typically have a positive economic impact and increase the mines' asset value and preserve mining jobs. Operating a mine safely also results in lower worker's compensation costs. Taken together, these should result in a positive economic impact and positive effects on employment.

In conclusion, the economic impact report projects that adding reciprocity requirements and limiting the ability of certified underground electricians to work at surface locations could raise the cost of operations and lower the asset value of private firms engaged in coal mining. This conclusion ignores the economic impact of ensuring qualified persons are completing these specialized tasks on coal mines. In addition, the EIA does not reflect the positive impact that having safer mines and controlling risks can positively affect the health and safety of mine workers, thus leading to increased value and use of private property.

Summary:

The proposed amendments:

- 1. Remove language requiring the division to mail certificate holders notices of certification dates and deadlines regarding completion requirements.*
- 2. Require miners to retake any "sections" failed on completion of a segmented format examination. This will represent a first retake of an examination.*
- 3. Amend provisions addressing reciprocal agreements with other states to require miners to meet both conditions set forth by the reciprocating party and meet Virginia-unique requirements.*

4. Require underground shot firers to recertify every five years by providing proof of experience, examination, or continuing education.

5. Exclude performing electrical work at surface locations from the underground electrical repairman requirements.

6. Require hoisting engineers to recertify every five years by providing proof that they have been performing hoisting duties in their work or passing a practical exam.

7. Require instructors to use applicable specialized equipment to help reinforce their teaching.

8. Require miners to have a practical knowledge of mine gases as part of their gas detection qualification.

9. Prohibit surface miners without underground mining experience from working underground without the required training and knowledge.

10. Require BCME training and continuing education instructors to be knowledgeable of or certified in the areas they teach. In addition students will be able to critique instructor effectiveness.

4 VAC 25-20-20. General requirements.

A. Applicants shall submit the Application for Certification Examination, Form DM-BCME-1.

B. Applicants shall submit the Verification of Work Experience Form DM-BCME-2 and documentation of experience for approval by the chief if required for the certification. This information shall be signed by a company official knowledgeable of the experience of the applicant and shall be notarized.

C. Applicants shall submit a valid standard or advanced first aid certificate or card, first responder card, MSHA Form 5000-23 with the new miner training or annual refresher portion completed, or Emergency Medical Technician Certification except where noted. First aid shall be a component of training and examination for all certifications issued by the BCME.

D. Applicants shall submit documentation of all degrees, continuing education, and other training if required for certification.

E. Applicants shall submit a \$10 fee to take each examination or to retake all or part of an examination.—~~Refer to § 45.1-161.31 of the Code of Virginia for acceptable forms of payment.~~

F. The Application for Certification Examination and the applicable fees shall be submitted at least five working days prior to the examination.

G. Applicants shall fulfill the requirements of this section and accumulate the required years of experience no later than five years after passing the examination.

H. Those applicants not meeting the requirements of subsection G of this section shall begin the application process again, submitting a new application, taking the examination again, and paying the fee. A work experience

form shall only be submitted if the applicant needs to update information.

I. Certificate holders shall notify the division office within 90 days of a change in their name, their mailing address, or the status of any certification required by this chapter. Failure to do so may prevent the division from notifying the certificate holder of the certification requirements. The last known address reported to the division will be used to mail notices and information.

~~J. The division shall mail notices to certificate holders which state the deadline for completion of requirements and the conditions under which the certificate may be suspended or revoked.~~

4 VAC 25-20-30. Examination requirements.

A. Applicants for first class mine foreman, surface foreman, surface blaster, and underground shot firer certifications shall score at least 85% on each section of the written examination. Applicants for all other certifications shall score at least 80% on each section of the written examination.

B. If all or part of an examination is failed, then the applicant shall wait at least 10 working days after the notification letter has been sent before retaking the failed section or sections.

C. If a section of the examination is failed a second time, then the applicant shall wait at least 10 working days after the notification letter has been sent before retaking the entire examination.

D. If the examination is failed on the third try, then the applicant shall wait the greater of one year from the date of the first examination or 10 working days after the notification letter has been sent before he may begin the examination cycle again.

E. If one year passes prior to the third take of the examination, the certification cycle shall start over with a new application, fee, and examination. A work experience form shall only be submitted if the applicant needs to update information.

F. An examination may not be taken more than three times in one year. *If a person fails any section or sections of a segmented underground mine foreman or electrical repairman examination, then the second take of the exam shall include only those sections failed during the first take and shall be given only after the person has completed the first take of all exam segments. If a person fails any section during the second take of the exam, then the person shall take the complete examination for the third take of the exam.*

G. Applicants for certifications shall also pass the gas detection examination unless already certified in gas detection except as noted in the certification requirements in Part II (4 VAC 25-20-50 et seq.) of this chapter.

4 VAC 25-20-40. Requirements for reciprocity.

A. Reciprocity shall be available for persons certified by states which accept the corresponding Virginia certifications and whose certification requirements are substantially equivalent to Virginia's.

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B. If reciprocity is requested by a person certified in another state which accepts the corresponding Virginia certification, a current copy of the pocket card or certificate, and documentation from the other state shall be submitted in addition to fulfilling the requirements in 4 VAC 25-20-20 and meeting other conditions established in the reciprocity agreement between the two states. These conditions shall at a minimum include the following:

1. Applicants for electrical reciprocity must pass the practical and the mine electrical records sections of the Virginia exam.

2. Applicants for mine foreman must take the Virginia Mining Law and Mine Records sections of the Virginia exam.

3. Applicants for advanced first aid who hold a current mine emergency technician certification from another state must take the eight hours of training with regard to recertification of CPR and the elements relevant to the advanced first aid program in Virginia.

C. Applicants for a surface blaster certification shall pass any other examinations required by the DMLR with a score of at least 85% and meet any corresponding DMLR requirements.

4 VAC 25-20-50. First class mine foreman.

A. Applicants shall possess five years mining experience, three of which shall be underground, and shall pass the first class mine foreman, map, and gas detection examinations.

B. Applicants shall be given three years credit for a degree in mining engineering from an approved four-year college or two years credit for a degree in mining technology.

C. Applicants shall be at least 23 years of age.

D. Beginning August 20, 1997, certified mine foremen shall complete the continuing education requirements in this section within two years from the date of their certification and every two years thereafter. The holder of the certificate shall submit documentation to the division indicating the required continuing education has been completed prior to these deadlines.

E. The holder of the certificate, in order to receive continuing education credit, shall satisfactorily complete a first class mine foreman continuing education course approved by the chief and taught by a certified instructor or other instructor approved by the chief.

F. The first class mine foreman shall complete at least four hours of continuing education every two years.

G. The content of the continuing education course shall include, but is not limited to, the:

1. Coal Mine Safety Act, Chapter 14.2 (§ 45.1-161.7 et seq.) of Title 45.1 of the Code of Virginia;
2. Virginia coal mine safety regulations;
3. Responsibilities of first class mine foreman;
4. Virginia coal mine safety policies and division operators' memos; and

5. Review of fatalities and accident trends in Virginia underground coal mines.

H. A maximum of four hours in excess of the required hours may be carried over to the next continuing education period.

I. Failure to complete continuing education requirements shall result in suspension of a person's certification pending completion of continuing education. If the continuing education requirement is not met within two years from the suspension date, the certification shall be revoked by the BCME.

J. The division shall send notice of any suspension to the last address the certified person reported to the division in accordance with 4 VAC 25-20-20 I ~~and to the last employer address reported to the division.~~ Upon request, DMME will provide the mine operator and other interested parties with a list of individuals whose certification is in suspension or has been revoked.

4 VAC 25-20-70. Surface foreman.

A. Applicants shall possess five years of surface coal mining experience.

B. Applicants shall pass the surface foreman, first aid, and gas detection examinations.

C. Beginning August 20, 1997, certified persons shall complete the continuing education requirements in this section within two years from the date of their certification and every two years thereafter. The holder of the certificate shall submit documentation to the division indicating the required continuing education has been completed prior to these deadlines.

D. The holder of the certificate, in order to receive continuing education credit, shall satisfactorily complete a surface foreman continuing education course approved by the chief and taught by a certified instructor or other instructor approved by the chief.

E. The surface foreman shall complete at least four hours of continuing education every two years.

F. The content of the continuing education course shall include, but is not limited to, the:

1. Coal Mine Safety Act, Chapter 14.2 (§ 45.1-161.7 et seq.) of Title 45.1 of the Code of Virginia;
2. Virginia coal mine safety regulations;
3. Responsibilities of surface foreman;
4. Virginia coal mine safety policies and division operators' memos; and
5. Review of fatalities and accident trends in Virginia surface coal mines.

G. A maximum of four hours in excess of the required hours may be carried over to the next continuing education period.

H. Failure to complete continuing education requirements shall result in suspension of a person's certification pending completion of continuing education. If the continuing education requirement is not met within two years from the

suspension date, the certification shall be revoked by the BCME.

I. The division shall send notice of any suspension to the last known address of the certified person reported to the division in accordance with 4 VAC 25-20-20 I ~~and to the last employer address reported to the division~~. Upon request, DMME will provide the mine operator and other interested parties with a list of individuals whose certification is in suspension or has been revoked.

4 VAC 25-20-90. Underground shot firer.

A. Applicants shall possess two years coal mining experience underground, one year of the two years shall have included handling and using explosives underground under the direction of a certified underground shot firer, or appropriately related work experience approved by the chief.

B. Applicants shall pass the underground shot firer and gas detection examinations.

C. *Twelve months after the effective date of this regulation, a certified underground shot firer must be recertified every five years by:*

1. *Presenting written proof that he has performed underground blasting duties in his work during two of the last three years immediately preceding the expiration date;*
2. *Retaking and passing the underground shot firer examination; or*
3. *Presenting verification of completion of underground mine foreman or other continuing education that included underground blasting safety training.*

D. *Failure to maintain education or training requirements shall result in suspension of a person's certification pending completion of continuing education or training. If the continuing education or training requirement is not met within two years from the suspension date, the certification shall be revoked by the BCME.*

E. *The division shall send notice of any suspension to the last address the certified person reported to the division in accordance with 4 VAC 25-20-20 I. Upon request, DMME will provide the mine operator and other interested parties with a list of individuals whose certification is in suspension or has been revoked.*

4 VAC 25-20-100. Underground electrical repairman.

A. Applicants shall possess one year of electrical experience in underground coal mining under the direction of a certified underground electrical repairman or appropriately related work experience approved by the chief.

B. Applicants shall pass the underground electrical repairman and gas detection examinations.

C. Applicants may be given six months credit for electrical educational training from a college, technical school, or vocational school.

D. Applicants who are certified may perform electrical work at underground ~~and surface~~ locations.

E. Continuing education requirements.

1. An underground electrical repairman certification shall remain valid if the certified person meets the MSHA annual retraining requirements (30 CFR 75.153(g)).

2. Submission of a copy of documentation sent to MSHA shall be acceptable to meet this requirement.

3. If a certificate expires because the certificate holder fails to complete the electrical retraining requirements, then the holder of the expired certificate shall meet requirements of Part I (4 VAC 25-20-10 et seq.) of this chapter and pass the electrical repairman examination prior to reinstatement of certification by the board.

4 VAC 25-20-140. Hoisting engineer.

A. Applicants shall possess two years of practical mining experience and one year of hoisting experience under the direction of a certified hoisting engineer or appropriately related work experience approved by the chief. A certified hoisting engineer shall verify the hoisting experience.

B. The applicant shall pass the hoisting engineer and gas detection examinations.

C. After the examination has been successfully completed, the applicant shall obtain written permission from a mine official to have a representative from the division observe the applicant's operation of hoisting equipment at the mine. Permission shall be on company stationery, signed by the company official, and submitted to the division.

D. A certified hoisting engineer may act as an automatic elevator operator after completing the on-site demonstration required by 4 VAC 25-20-240 C.

E. *A hoisting engineer must be recertified every five years by:*

1. *Presenting written proof that he has performed hoisting engineer duties in his work during two of the last three years immediately preceding the expiration date; or*
2. *Retaking and passing the practical demonstration section of the hoisting engineer examination and meeting requirements of subsection C of this section.*

F. *Failure to maintain education or training requirements shall result in suspension of a person's certification pending completion of continuing education or training. If the continuing education or training requirement is not met within two years from the suspension date, the certification shall be revoked by the BCME.*

G. *The division shall send notice of any suspension to the last address the certified person reported to the division in accordance with 4 VAC 25-20-20 I. Upon request, DMME will provide the mine operator and other interested parties with a list of individuals whose certification is in suspension or has been revoked.*

4 VAC 25-20-190. Underground diesel engine mechanic.

A. All maintenance work performed on diesel engines used to power equipment in underground coal mines shall be performed by, or under the direct supervision of, a person possessing a Diesel Engine Mechanic Certificate issued by

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the BCME. In addition, no operator of an underground coal mine in the Commonwealth of Virginia may use diesel-powered equipment in the mine without first employing a diesel engine mechanic who is certified by the BCME.

B. "Maintenance" shall include all of the tasks required to be performed routinely to ensure that the engine exhaust emissions conform with the requirements of the laws and regulations of Virginia and MSHA, and with the maintenance recommendations of the manufacturer of the engine.

C. Applicants shall possess six months experience as a diesel engine mechanic, complete a diesel engine mechanic course approved by the division, or possess appropriately related work experience approved by the chief. A one-year diesel engine mechanic program approved by the division may be substituted for the diesel engine mechanic experience.

D. Applicants shall pass the underground diesel engine mechanic, first aid, and gas detection examinations.

E. The initial training course for diesel engine mechanics shall include at least 32 hours of classroom instruction and be taught by a certified instructor.

F. To qualify for approval by the chief, the content of the initial training course for diesel engine mechanics shall include, but is not limited to:

1. Diesel engine principles;
2. Diesel fuel and fuel systems;
3. Engine exhaust systems;
4. State and federal diesel laws and regulations;
5. Safe use of equipment;
6. Emission controls, testing procedures and recordkeeping; and
7. Protection of health of workers exposed to diesel equipment.

G. The annual continuing education course for diesel engine mechanics shall include at least four hours of classroom instruction and be taught by a certified instructor.

H. The content of the continuing education course shall include, but not be limited to:

1. Diesel technology;
2. State and federal diesel laws and regulations;
3. Safe use of equipment;
4. Protection of the health of workers exposed to diesel equipment; and
5. Required emission test procedures and recordkeeping.

I. A Diesel Engine Mechanic Certificate shall remain valid until December 31 following the anniversary date of the initial training, providing the certification requirements are met, unless the certificate is revoked by the BCME.

J. The holder of the certificate shall renew the certificate by satisfactorily completing a diesel engine mechanic continuing

education course approved by the chief and taught by a certified instructor.

K. The holder of the certificate shall submit documentation to the division indicating the required continuing education has been completed before the expiration of the card.

L. Failure to complete the required education shall result in suspension of certification pending completion of continuing education. If the continuing education requirement is not met within two years from the suspension date, then the certification shall be revoked by the BCME.

M. The division shall send notice of any suspension to the last known address that the certified person reported to the division in accordance with 4 VAC 25-20-20 ~~and to the last known employer address~~. Upon request, DMME will provide the mine operator and other interested parties with a list of individuals whose certification is in suspension or has been revoked.

4 VAC 25-20-200. Diesel engine mechanic instructor.

A. Applicants shall have teaching experience and be a certified diesel engine mechanic or possess appropriately related work experience approved by the chief.

B. Applicants shall maintain the certificate by teaching at least one approved diesel engine mechanic course every two years or at least one approved diesel engine mechanic continuing education course every year.

C. Documentation shall be submitted to the division indicating the required teaching has been completed.

D. Failure to complete the required teaching shall result in suspension of the certification. Applicants may meet the teaching requirement by teaching under the supervision of a certified diesel mechanic engine instructor. If the teaching requirement is not met one year from suspension, then the certification shall be revoked by the BCME.

E. The division shall send notice of any suspension to the last known address that the certified person reported to the division in accordance with 4 VAC 25-20-20 ~~and to the last known employer address~~. Upon request, DMME will provide the mine operator and other interested parties with a list of individuals whose certification is in suspension or has been revoked.

4 VAC 25-20-210. Advanced first aid.

A. Applicants shall complete a 24-hour advanced first aid class, at minimum, taught by a certified advanced first aid instructor or possess appropriately related work experience approved by the chief and pass the advanced first aid examination.

B. Approved advanced first aid classes shall cover the following subjects:

1. Introduction to first aid;
2. Respiratory emergencies and cardiopulmonary resuscitation; i.e., heart saver or other four-hour equivalent;
3. Removal of foreign bodies from the throat (the Heimlich Maneuver);

4. Wounds;
5. Shock;
6. Specific injuries including head and chest;
7. Contamination, infection, and prevention;
8. Burns;
9. Cold exposure and frost bite;
10. Bone and joint injuries;
11. Dressings and bandages;
12. Sudden illness;
13. Emergency underground rescue and transfer;
14. Unusual rescue situations related to mining;
15. Poisoning, toxic and hazardous materials;
16. Transportation of victims; and
17. Heat exposure.

C. An advanced first aid certification in good standing with the BCME shall remain valid until the last day of the month following the anniversary date of the initial training. Certified persons shall complete four hours continuing education annually, which is taught by a certified advanced first aid instructor, to maintain their advanced first aid card. This continuing education requirement shall include recertification in CPR.

D. The holder of the certificate shall submit documentation to the division indicating the required continuing education has been completed.

E. Applicants holding a valid EMT card or EMT first responder card, shall be deemed eligible to receive advanced first aid certification without having to complete the initial advanced first aid class or without passing the advanced first aid examination. All applicants shall complete eight hours of continuing education. The advanced first aid certification shall start on the day the applicant's EMT certification or EMT first responder certification expires.

F. Failure to complete required continuing education shall result in suspension of the certification pending completion of the continuing education. Applicants may meet the teaching requirement by teaching under the supervision of an advanced first aid instructor. If the continuing education requirement is not met within one year from the suspension date, then the certification shall be revoked by the BCME.

G. The division shall send notice of any suspension to the last known address of the certified person reported to the division in accordance with 4 VAC 25-20-20 ~~and to the last known employer address~~. Upon request, DMME will provide the mine operator and other interested parties with a list of individuals whose certification is in suspension or has been revoked.

4 VAC 25-20-220. Advanced first aid instructor.

A. Applicants shall be certified as an advanced first aid instructor by the American Red Cross, National Safety

Council, Virginia Emergency Medical Services, or as otherwise approved by the chief. Applicants shall also be certified in cardiopulmonary resuscitation by the American Heart Association or the American Red Cross. *Advanced first aid instructors must use the materials and training aids necessary to deliver the skills and training associated with advanced first aid.*

B. The holder of the certificate shall submit documentation to the division indicating that they have continued their certification as required by subsection A of this section or by teaching one initial or refresher first aid training course for DMME within a two-year period.

C. Failure to maintain a certified advanced first aid instructor's certification will result in suspension of the applicant's BCME certification. Applicants may meet the teaching requirement by teaching under the supervision of an advanced first aid instructor. If the certification is not renewed within one year from the suspension date, then the certification shall be revoked by the BCME.

D. The division shall send notice of any suspension to the last known address of the certified person reported to the division in accordance with 4 VAC 25-20-20 ~~and to the last known address of the employer~~. Upon request, DMME will provide the mine operator and other interested parties with a list of individuals whose certification is in suspension or has been revoked.

4 VAC 25-20-250. Gas detection qualification.

A. The applicant shall demonstrate the proper use of gas detection equipment and shall pass the gas detection examination. *The applicant shall also demonstrate a practical knowledge of mine gases.*

B. The general requirements of 4 VAC 25-20-20 shall not apply except the applicants shall complete Form DM-BCME-1.

4 VAC 25-20-255. General coal miner (GCM) surface and underground.

A. *General coal miner certification, surface, authorizes work at surface mines, surface facility locations and surface areas of underground coal mines. This does not authorize underground duties at underground coal mines. General coal miner certification, underground, authorizes work at underground areas and surface areas of underground mines.*

B. Applicants employed in Virginia coal mines prior to January 1, 1996, who wish to become certified shall:

1. Meet the requirements of Part I (4 VAC 25-20-10 et seq.) of this chapter;
2. Submit a notarized work experience form verifying (surface or underground) mining experience prior to January 1, 1996; and
3. Pass the gas detection examination if they are not already gas detection qualified unless working only on the surface of a mine.

~~B.~~C. Applicants seeking certification after January 1, 1996, shall:

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1. Meet the requirements of Part I (4 VAC 25-20-10 et seq.) of this chapter.

2. Complete training which shall include highlights of the coal mine safety laws of Virginia and the underground coal mine safety and health regulations of the division and the BCME. The training shall address surface mining requirements for the GCM Surface Certification or underground coal mining requirements for the GCM Underground Certification. The training shall include a demonstration of knowledge or passing of a written examination on Virginia's coal mine safety laws and regulations covering either surface or underground mining. First aid shall be included in the general coal miner training unless applicants submit new miner training or annual refresher training to meet first aid requirements.

3. Submit Form DM-BCME-3, Verification of Training Completed for General Coal Miner Certification, prior to commencing work in a coal mine. The form shall be signed by the employee and the instructor and the date they sign will be the effective date of the General Coal Miner certification.

4. Pass the gas detection examination unless working only on the surface of a mine.

4 VAC 25-20-259. BCME instructor.

A. Instructors conducting training used to meet requirements of the BCME shall be certified unless otherwise approved in this chapter.

B. To become a certified instructor, the person shall:

1. Submit an application showing applicable mining ~~or knowledge and~~ instructor experience.

2. Agree to monitoring and evaluation by division instructors and demonstrate the knowledge, skill and ability to conduct training.

3. *Agree to participate with division representatives in a review of the materials to be taught if the person is not certified in the areas he wishes to teach.*

4. *Provide students with the opportunity to critique the instructor's effectiveness by use of a critique form.*

C. Final approval for certification shall be based on an evaluation of performance.

D. Applicants shall maintain the certificate by teaching at least one approved certification course every two years.

E. The holder of the certificate shall submit documentation to the division indicating the required teaching has been completed.

F. Failure to recertify shall result in suspension of the certification pending completion of the required teaching. Applicants may meet the teaching requirement by teaching under the supervision of a certified instructor. If the teaching requirement is not met within one year from the suspension date, then the certification shall be revoked by the BCME.

G. The division shall send notice of any suspension to the last known address of the certified person reported to the division

in accordance with 4 VAC 25-20-20 I and to the last known employer address.

4 VAC 25-20-390. Procedures for conducting on-site examination.

A. The on-site examination of the mine foreman will be handled in such a way as to not prevent the foreman from performing his duties. The on-site examination must be conducted, to the extent possible, immediately on arrival outside on the surface on the day the order of closure or notice of violation is issued.

B. These procedures will be followed in conducting the on-site examination:

1. The examination will be administered in a written format.

~~2. Ten questions selected by the mine inspector will be written out by the mine inspector on paper for use in the on-site examination.~~

~~3.2.~~ 2. The mine inspector will choose the 10 questions from the approved pool *related to the condition or practice being cited by the order of closure or notice of violation.*

~~4. The mine inspector will choose the 10 questions related to the condition or practice being cited by the order of closure or notice of violation.~~

~~5.3.~~ 3. The mine foreman will be provided sufficient time to write out his answers to the questions. He may refer to plans or other information available to him. However, no other person may assist him in answering the questions. The mine inspector will remain with the mine foreman during the written examination.

~~6.4.~~ 4. The mine inspector will read the questions being asked to the mine foreman if requested and should answer any questions from the mine foreman which could help to clarify his understanding of the questions.

~~7.5.~~ 5. The mine foreman may respond to the questions orally. In this case, the mine inspector will record the response of the mine foreman to each question on the examination form, have the foreman sign the form as accurately representing the response, and provide the mine foreman a copy promptly upon completion.

<p>NOTICE: The forms used in administering 4 VAC 25-20, Board of Coal Mining Examiners Certification Requirements, are not being published due to the large number; however, the name of each form is listed below. The forms are available for public inspection at the Department of Mines, Minerals and Energy, 202 N. Ninth Street, 8th Floor, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.</p>

FORMS

~~Advanced First Aid Practical Stations & CPR (Written & Practical), DM-BCME-5 (Issued 10/24/96).~~

Application for Certification Examination, DM-BCME-1 (rev. 5/99).

Verification of Work Experience, DM-BCME-2 (Issued 2/1/96).

Verification of Training Completed for General Coal Miner Certification, DM-BCME-3 (Issued ~~2/4/96~~ rev. 5/96).

Application for Recertification: DMLR Endorsement/Blaster's Certification, DMLR-BCME-3 (Rev. 6/95).

Verification for Training Completed for Continuing Education, DM-BCME-4 (Issued 5/31/96).

Application for DMLR Endorsement: Blaster's Certification (Coal Surface Mining Operation), DMLR-BCME-4 (Rev. 6/95).

Advanced First Aid Practical Stations & CPR (Written & Practical), DM-BCME-5 (Issued 10/24/96).

~~Application for Certification Examination: Mineral Mining -- Board of Mineral Mining Examiners, DM-BMME-1B (Rev. 2/94).~~

~~Certificate of Work Experience: Mineral Mining -- Board of Mineral Mining Examiners, DMM-BMME-2B (Rev. 2/94).~~

~~Verification for Training Completed for Continuing Education, DM-BCME-4 (Issued 5/31/96).~~

VA.R. Doc. No. R02-266; Filed July 10, 2003, 11:27 a.m.

DEPARTMENT OF MINES, MINERALS AND ENERGY

Title of Regulation: 4 VAC 25-125. Regulations Governing Coal Stockpiles and Bulk Storage and Handling Facilities (adding 4 VAC 25-125-10 through 4 VAC 25-125-40).

Statutory Authority: §§ 45.1-161.3, 45.1-161.106 and 45.1-161.254 of the Code of Virginia.

Public Hearing Date: September 23, 2003 - 9:30 a.m.

Public comments may be submitted until 5 p.m. on October 11, 2003.

(See Calendar of Events section for additional information)

Agency Contact: Stephen A. Walz, Regulatory Coordinator, Department of Mines, Minerals and Energy, 202 N. Ninth Street, 8th Floor, Richmond, Virginia 23219-3402, telephone (804) 692-3211, FAX (804) 692-3237, or e-mail saw@mme.state.va.us.

Basis: Section 45.1-161.3 of the Code of Virginia states that the department has the power to promulgate regulations necessary or incidental to the performance of duties or execution of powers conferred under Title 45.1 of the Code of Virginia and other relevant chapters. These regulations may be promulgated by the department, the chief, or the director, as appropriate. They must be promulgated in accordance with the provisions of Article 2 (§ 2.2-4007 et seq.) of the Administrative Process Act.

Sections 45.1-161.106 and 45.1-161.254 authorize the Chief of the Department of Mines, Minerals and Energy, Division of Mines, to promulgate regulations necessary to ensure safe and healthy working conditions in underground and surface coal mines. Specifically, such regulations are to address the storage or disposal of any matter or material extracted or disturbed as the result of an underground or surface coal mining operation, used in the mining operation, or used for the

refinement or preparation of the materials extracted from the coal mining operation.

Section 45.1-161.107 of the Coal Mine Safety Act directs the chief to consider a number of factors in regulatory development; the federal mine safety law, standards generally recognized by the coal mining industry or set by recognized professional organizations and the results of research and other information that is available regarding the highest degree of protection and the latest technology.

Purpose: This new regulation is designed to help ensure the safe and effective operation and use of heavy equipment on and around coal mine sites where coal is stockpiled and stored. This proposed regulatory action is necessary to help meet industry and worker needs to improve worker safety on and around coal handling and storage facilities at coal mine sites. The Regulations Governing Coal Stockpiles and Bulk Storage and Handling Facilities provides worker protection through the implementation of safe working procedures and practices where there were previously none.

Substance: The Regulations Governing Coal Stockpiles and Bulk Storage and Handling Facilities are new regulations designed to ensure the health and safety of mine workers where underlying coal feeders and heavy equipment are used to handle coal and coal-related materials. These regulations will serve to protect mine workers from potential health and safety hazards through the implementation of equipment use procedures and by providing guidance on the use of heavy equipment around coal and material stockpiles and bulk storage and handling facilities where underlying coal feeders are used at coal mine facilities, and by establishing safety standards for practices at coal and bulk material storage facilities such as silos, bins, and hoppers.

This regulation is being promulgated as a means to help prevent fatal and nonfatal injuries and equipment damage. An initial draft of the regulation has been developed with input from the Virginia Coal Mine Safety Board and the federal Mine Safety Health Administration (MSHA).

Industry and government technical information and regulatory guidance used by the federal MSHA and the State of West Virginia are proposed to be incorporated into the regulation.

Issues: The proposed regulatory action presents differing issues associated with coal mine operations and work performed around stockpiles and storage facilities, resulting in advantages and disadvantages to both the public and to operators of coal mine sites.

Health and safety benefits and cost savings for the public as well as mine operators are end products of a safe work environment. Examples of these would be insurance savings, minimal loss of time from work due to injuries, equipment repair and replacement cost savings. Coal mine workers and operators that are able to work safer and in good health generally are more productive citizens, essentially leading to increased revenue to the worker, the community, and the operator.

The Regulations Governing Coal Stockpiles and Bulk Storage and Handling Facilities set the safety standard for all operators and coal miners to preserve the health and safety of

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the coal mine worker when operating heavy equipment on coal mine sites. Though this action would be advantageous to operators, mine workers and communities, there is a disadvantage to implementation of the proposed regulation. This would be a one-time cost of equipment to the operator or upgrades to equipment. Incidental costs may surface in the form of training by the operator to its employees.

It is important to note that many operators have presently implemented equipment modifications and implemented changes to policies and procedures prior to this regulation because it adds to a safer work environment. There would be no added cost resulting from the implementation of this proposed regulation to these mine operators.

Fiscal Impact:

A. The projected cost to the state to implement and enforce the proposed regulation:

1. Fund Source/Fund Detail: General Fund; 0100: Special Fund; 0218
2. Budget Activity:
 - a. Program/subprogram; Individual Safety, 55500
 - b. Program/subprogram; Mine inspections, 55503
3. One-time cost vs. on-going expenditures: n/a

Because many of these requirements are presently in place, it is not expected to have additional cost impact to the state.

B. The projected cost of the regulation on localities: No cost to localities.

C. A description of the individuals, businesses or other entities that likely are to be affected by the regulation:

1. Coal Companies
2. Coal Miners
3. Equipment Manufacturers

D. The agency's best estimate of the number of such entities that will be affected:

1. 6 Coal Companies under DMME jurisdiction
2. 156 Coal Miners
3. 14 Equipment Manufacturers

E. The projected cost of the regulation for affected individuals, businesses, or other entities:

Collectively, coal companies under DMME jurisdiction that have not, at present, implemented changes to coal handling equipment should encounter a one-time cost of approximately \$800,000. The individual company cost varies from \$50,000 to \$320,000 and is dependent on the number of pieces of equipment necessary to be fitted.

The Division of Mines has attempted to determine the number and types of existing equipment which would need to be retrofitted and the cost of adding these improvements to new equipment. This was done by talking to coal operators and equipment manufacturers.

The cost of new equipment, which is built to the specifications of the operator for a particular mine, can be made to meet these requirements. There could be a cost increase for operators purchasing new equipment. An accurate estimate is difficult because of the cost of converting equipment varies and is dependent on the extent of the improvements.

Savings will result from reduced time lost to injury, accidents and loss of life. Having heavy equipment, feeders and coal handling equipment that is made safer for use will result in insurance savings as well. The greatest saving will be through the prevention of the loss of the lives of personnel. Similar safety standards that have been implemented in West Virginia have proven to save lives where accidents have occurred.

Department of Planning and Budget's Economic Impact

Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007 H of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007 H requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the proposed regulation. The General Assembly mandates in §§ 45.1-161.254 and 45.1-161.106 of the Code of Virginia that the Chief of the Department of Mines, Minerals, and Energy (DMME), in consultation with the Virginia Coal Mine Safety Board, promulgate regulations necessary to ensure safe and healthy working conditions at all surface and underground mines in Virginia.

The proposed regulation establishes minimum standards to ensure the safe use of heavy equipment on coal stockpiles and in facilities that store, handle, and transport unconsolidated bulk materials. The proposed regulation only applies to coal stockpiles and facilities storing, handling, or transporting unconsolidated bulk materials directly related to coal mining activities. (i) The regulation establishes general safety requirements for coal stockpiles, including those with underlying feeders. The requirements include visual examination of stockpiles and stockpile dumping locations before the commencement of work (with ground conditions determining the frequency of subsequent examinations), provision of sufficient illumination such that safe working conditions are maintained, and hazard training for all employees who work on or around coal stockpiles. (ii) The regulation establishes specific work safety procedures and equipment safety requirements for coal stockpiles with underlying feeders. Required work safety procedures include maintaining communication between equipment operators working on stockpiles and individuals operating feeders and other equipment drawing from the stockpiles, limiting the movement of individuals on foot on areas of stockpiles directly over underlying feeders, and having an approved stockpile safety plan in place before allowing the operation of

equipment directly over areas where underlying feeders are in place. The new equipment safety requirements include enclosing the cab of all mobile equipment operated on a stockpile, fitting equipment cabs with two self-contained self rescuer packages to be used in the event of the equipment falling into a cavity, and equipping underlying feeders with gates or other controls such that material is not inadvertently discharged when the feeder is not activated. (iii) The regulation establishes safety provisions for storage bins, bunkers, hoppers, and silos where unconsolidated bulk materials are stored, handled, or transported. These provisions require bins, bunkers, hoppers, and silos are equipped to ensure that during normal operations workers are not required to enter or work in areas where there is a potential for being trapped by caving or sliding material. The provisions include equipping these facilities with supply and discharge operating controls such that spills and overruns do not endanger workers, constructing suitable walkways and passageways for the movement of workers around or over areas where unconsolidated bulk materials are stored, handled, or transported, and having adequate safety procedures and equipment should workers be required to enter these areas.

Estimated economic impact. Description of the Regulation: The proposed regulation establishes safety standards for workers and equipment when working on or around coal stockpiles and at facilities storing, handling, and transporting unconsolidated bulk material. The regulation applies to stockpiles and facilities directly related to coal mining activities.

The regulation establishes general safety requirements for coal stockpiles. Stockpile design and management are to be such that the coal is safely stored and handled. Any actual or potential instability in a coal stockpile is to be immediately reported to the foreman and corrective action is to be taken promptly. Stockpiles and stockpile dumping locations are to be visually examined before the start of work. Subsequent examinations are to be done based on ground conditions. Sufficient illumination is to be provided in order to ensure safe working conditions and employees who work on or around coal stockpiles are to be trained and knowledgeable about the potential hazards.

The regulation establishes specific safety requirements for working on or around coal stockpiles with underlying feeders. It establishes safety procedures to be followed by workers and coal mine operators. It also establishes safety standards for equipment being used and operated on coal stockpiles with underlying feeders.

1. The proposed regulation establishes a number of safety procedures to be followed by workers and coal mine operators working on coal stockpiles with underlying feeders. Telephone or two-way communication is to be maintained as necessary between equipment operators working on stockpiles and individuals operating conveyors, feeders, hoppers, or load-out facilities drawing from those stockpiles. Equipment operators are to keep the doors and windows of the equipment cab shut while the equipment is in operation on a stockpile. No equipment is to be operated on areas of stockpiles directly over underlying feeders

unless a DMME-approved stockpile safety plan is in place. No worker is to walk over areas of stockpiles that have underlying feeders in place unless under the provisions of the approved stockpile safety plan or in the case of an emergency (and then only when supervised by a foreman, secured by a safety line, and with the underlying feeders shut down). The regulation lays out the necessary elements of a stockpile safety plan. The regulation also lays out the procedure to be followed when pushing materials over the crest of a stockpile or draw hole.

2. The proposed regulation establishes a number of safety requirements for equipment used and operated on coal stockpiles with underlying feeders. All mobile equipment manually operated on these stockpiles are to be equipped with an enclosed cab and the glass and frames used to enclose the cab are required to meet certain safety standards. The cab is to be fitted with two self-contained self-rescuers (that provide oxygen) in case of the worker becoming engulfed within a stockpile during an accident. The equipment is also required to have a primary two-way communications system and a back-up communications system supplied by an independent power source. Mobile equipment operators are to be provided with a remote control device that is capable of stopping the flow of coal coming onto and being taken off the stockpile. Mobile equipment operators are also to be provided with emergency lighting. Underlying free-flowing feeders are to be equipped with gates or other controls such that material is not inadvertently discharged when the feeder is not activated. Warning signs are to be posted at the entrance to coal stockpiles with underlying feeders and the location of each draw-off point is to be clearly indicated by a marker suspended over the underlying feeder. Visual indicators are to be used to indicate to the mobile equipment operator which feeders are being used.

The proposed regulation establishes safety requirements for facilities that store, handle, or transport unconsolidated bulk materials including coal. Storage bins, bunkers, hoppers, and silos are to be equipped with mechanical devices and other means of handling materials such that workers are not required to enter these areas during normal operations. These facilities are also to be equipped with supply and discharge operating controls such that spills or overruns do not endanger the workers. Suitable walkways are to be provided in areas where workers are required to move on or over bins, bunkers, hoppers, or silos. Ladders, platforms, or landings are to be provided for workers entering these facilities for maintenance and inspection purposes. Moreover, workers entering the facility are required to follow safety procedures as specified in the proposed regulation.

Rationale: The proposed regulation is intended to protect coal mine workers from potential health and safety hazards associated with working on coal stockpiles and at facilities that store, handle, or transport unconsolidated bulk materials. According to the Mine Safety and Health Administration (MSHA), between 1980 and 1999, nationwide there have been 14 stockpile accidents resulting in 18 fatalities and numerous injuries. Of the 14 accidents, 13 occurred when a void created in the coal stockpile collapsed, engulfing the bulldozer operator working on it. A majority of stockpile

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accidents have occurred at mines in a handful of states, including Virginia. The most recent stockpile-related fatality in Virginia occurred in 1998 at a mine near Norton, Virginia. In that incident, a coal miner was killed when his mobile equipment was engulfed in a void over a feeder. Other states such as West Virginia, Indiana, and Kentucky have also had a number of fatal accidents involving individuals working on coal stockpiles.

According to DMME, the potential for the creation of cavities and voids in stockpiles with underlying feeders poses a serious threat to workers. Cavities and voids within a stockpile serve to make it unstable and increase the chances of a worker falling into one and becoming engulfed. Moreover, according to a 1999 MSHA report, factors such as changing pile conditions, and working with insufficient illumination and in adverse weather pose additional dangers to individuals working on coal stockpiles.

Current MSHA requirements do not specifically address the issue of worker safety on coal stockpiles. Rather than promulgate new federal standards, MSHA recommended that states with coal stockpile safety problems develop regulations that address the issue. Pennsylvania issued guidelines for stockpile and surge-pile safety. In 1998, Kentucky adopted a regulation that addressed some of the safety concerns relating to coal stockpile safety. In 2001, West Virginia, working with MSHA, developed and adopted a regulation that established safety precautions to be taken on coal stockpiles (eight of the 18 fatalities between 1980 and 1999 occurred at West Virginia mines). The regulation promulgated by West Virginia was largely based on safety measures suggested by MSHA. The coal stockpile safety standards being proposed in Virginia are also based on MSHA recommendations and are similar in content to those adopted in West Virginia.

However, in addition to the safety precautions for coal stockpiles, the proposed regulation includes additional safety precautions for facilities storing, handling, or transporting unconsolidated bulk coal and noncoal materials related to coal mining. These requirements are identical to those being implemented by MSHA on such facilities under their jurisdiction. DMME believes that most facilities storing, handling, and transporting unconsolidated bulk materials already have much, if not all, of the equipment required to comply with the proposed regulation.

Estimated economic impact: The proposed regulation imposes a significant cost on coal mining businesses in Virginia. DMME estimates that the proposed regulation will impose a one-time cost of approximately \$800,000 on coal mining companies under DMME jurisdiction. Costs imposed on individual companies could vary from \$50,000 to \$320,000. According to DMME, the proposed regulation will affect 6 coal companies under DMME jurisdiction. While each requirement being proposed will impose some additional cost, the requirements to retrofit existing equipment and to install new equipment or safety features on coal stockpiles with underlying feeders are likely to account for much of the estimated compliance cost. Most of the companies affected by the proposed regulation are likely to be medium- to large-sized coal companies. These companies are more likely to operate stockpiles with underlying feeders than the smaller

coal companies. Coal companies affected by the regulation range in size from companies that produced 232 thousand tons of coal and earned revenues of a little over \$6.5 million in 2002 to companies that produced 2.9 million tons and earned revenues of over \$81 million in 2002.

According to the Virginia Coal Association, DMME has consulted almost everyone in the regulated community about the proposed regulatory action. In an informal survey of their members, the association did not hear any significant complaints regarding the proposed regulation and its financial impact on coal companies. According to a member of the Coal Mine Safety Board, the major impact of the proposed regulation would be on the larger coal companies that were more likely to operate underlying feeders and that they were also more likely to have many of the requirements of the regulation in place already. He did not believe that smaller coal companies such as the one he worked for were going to be significantly affected by the regulation.

Unsafe and/or inadequate equipment has been a major cause of coal stockpiles accidents. Recent accidents in Virginia in 1998 and in West Virginia in 1999 resulted in the death of two bulldozer operators when their equipment fell into a cavity above a feeder and became engulfed. In both cases, coal filled the cab when the windows of the bulldozer broke or were pushed out of their gaskets. A 1999 MSHA report recommended that, "while safety measures should be in place to minimize the formation of hidden cavities and to prevent equipment from being exposed to the danger of such cavities, as a back-up safety measure either cabs of surge-pile equipment should be made strong enough to resist burial pressures or remote-control equipment should be used".

Most of the substantive changes being proposed are intended either to prevent workers and equipment from falling into voids and or to minimize fatalities in the event that they do fall into a void. DMME determined that requiring the use of remote controlled equipment to handle coal stockpiles would be prohibitively expensive and would not provide any substantial improvement in safety over the standards being proposed in this regulation. Safety requirements such as reinforcing the cab of mobile equipment operated on stockpiles, equipping the cab with self-contained self rescuers, and providing mobile equipment operators with a two-way communications system have been shown to prevented fatalities. In a 2002 accident at an Alabama mine, a bulldozer slipped into a hidden void. Safety precautions such as those mentioned above allowed the bulldozer operator to be successfully rescued from his equipment.

The proposed regulation is intended to enhance worker safety at coal stockpiles and at facilities storing, handling, or transporting unconsolidated bulk materials directly related to coal mining activities. There are no significant environmental or public health and safety issues being addressed by the proposed regulation.

While the proposed regulation imposes significant costs on coal companies under DMME jurisdiction, it is expected to prevent injuries and save lives. Work place accidents generate losses for companies through time lost to injuries and fatalities, damage to equipment and cost incurred in repairing or replacing it, increased insurance costs, and higher

wage and salary costs required to compensate workers for the increased risk of death or injury. In order to avoid the risk and hence the costs associated with accidents at the work place, many companies tend to have safety measures in place that are over and above those required by law.

If the expected benefits from reducing the risk of injuries and fatalities on coal stockpiles and at facilities storing, handling, and transporting unconsolidated bulk materials outweigh the costs of doing so, coal companies would voluntarily choose to implement such standards and the need for such a regulation would be moot. According to DMME, while some companies have voluntarily implemented the more substantive aspects of the proposed regulation, such as retrofitting existing equipment and installing new equipment and safety features, others have chosen not to do so. Companies would choose not to implement these safety standards if the benefits they expect from doing so are outweighed by costs. There could be two reasons why expected costs are higher than expected benefits: the costs imposed by the regulation are higher than warranted by the risk of injury and death or that the benefits firms expect from implementing the standards are not large enough to justify doing it.

Expected Costs: If the standards proposed in the regulation and the cost associated with implementing them are disproportionately high given the risks faced by workers, the proposed regulation is likely to have a negative economic impact.

The requirements of this regulation are very similar to those adopted by West Virginia in 2001. West Virginia has a worse record than Virginia on safety at coal stockpiles and at facilities storing, handling, and transporting unconsolidated bulk materials. Between 1985 and 2000, West Virginia's coal production averaged 154.9 million short tons of coal per year¹. On average, Virginia produced approximately 34.2 million short tons of coal per year over the same period. Assuming this to be the average coal production per year in West Virginia and Virginia between 1980 and 1999, there were 2.58 deaths per billion short tons of coal produced in West Virginia and 1.27 death per billion short tons of coal produced in Virginia (nationwide there were 0.89 deaths per billion short tons of coal produced). Thus, imposing similar standards and hence, similar costs to those imposed in West Virginia may not be appropriate.

Moreover, the rate of fatality has been declining during the 1990s, with 12 of the 18 fatalities reported between 1980 and 1999 occurring in the 1980s. The United States produced a little under 9 billion short tons of coal in the 1980s and a little over 10 billion short tons of coal in the 1990s². Thus, the number of deaths per billion short tons of coal in the 1980s was more than twice the number in the 1990s. Thus, developing safety standards based on the total number of fatalities between 1980 and 1999 may not accurately reflect the risk currently posed to workers and may impose unnecessarily high costs on coal companies in Virginia. Moreover, since a number of facilities have voluntarily

installed safety equipment, it may be expected that future death rates will be lower still.

The cost effectiveness of the regulation will depend on the number of lives saved and injuries prevented in the future as a direct result of the regulation. Virginia has had one fatality related to coal stockpiles in the last two decades. The risk of another fatality in the next two decades is lower than in the past two because of the declining fatality rate and the voluntary adoption of safety standards by some companies. However, assuming the same risk as in the last two decades, Virginia could expect to have another fatality in the next 20 years. Spending \$800,000 today would be justified if the value of a life saved ten years from today is worth greater than or equal to \$1.42 million (assuming a discount rate of 5.9%, the average yield on ten-year treasury bonds between 1993 and 2002). Should the fatality rate continue to fall, as it has recently, a higher value for a life saved would be required to justify the \$800,000 expenditure. However, this range of values for a life saved is well within the range commonly used to justify expenditures on reducing mortality. Thus, there is no reason to conclude that the costs imposed by this rule are excessive, especially as compared to other life-saving policies implemented by state and federal governments.

Expected Benefits: If, on the other hand, we assume that the safety standards and hence the costs imposed by the proposed regulation constitute minimum safety standards given the risk of injury or death, companies are not voluntarily enforcing these standards because the expected benefits from implementing the standards are less than the costs of doing so.

By having employees work on coal stockpiles and other facilities storing, handling, and transporting unconsolidated bulk materials, coal companies are putting their employees in a potentially hazardous situation. Market forces (through various costs such as time lost to injuries and fatalities, damage to equipment as a result of accidents, and wage and insurance costs) work to ensure that these companies provide a certain minimum level of protection to their workers. If expected benefits are outweighed by the expected costs of meeting the proposed standards, companies would not voluntarily choose to enforce these standards.

Expected benefits could be low because the level of risk deemed acceptable by the market is higher than what is provided under this regulation. For example, the insurance and compensation (wages and benefits) costs incurred by companies might reflect the cost of reducing the risk of death or injury to workers to a level considered appropriate by the market. However, the standards proposed by this regulation might seek to reduce the risk even further. Under these circumstances, companies would prefer to incur the additional insurance and compensation costs rather than incur the costs of voluntarily meeting the safety standards.

Expected benefits could also be low because the potential benefits of meeting these safety requirements are not an accurate reflection of the actual benefits. Compensation costs and insurance costs faced by these companies may not accurately reflect the risk of injury or death to workers and hence companies' perception of the risk posed to workers is likely to be lower than the actual risk. Under these

¹ U.S. Coal Production by State, Energy Information Administration

² Annual U.S. Coal Production, Energy Information Administration

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circumstances, voluntarily implemented safety standards would not reduce the risk to a level that would be considered appropriate by the market and/or provided for under this regulation.

Thus, if the safety requirements being proposed in the regulation are minimum safety standards required in order to reduce the risk of injuries and fatalities to a level deemed appropriate, the proposed regulation is likely to have a positive economic impact.

Conclusion: The proposed regulation will impose no significant additional costs on coal companies voluntarily complying with the more substantive changes being proposed in the regulation. However, it is likely to impose a significant one-time cost on coal companies not currently complying with these requirements. The proposed regulation is likely to have significant economic benefits by preventing future injuries and fatalities among workers operating on coal stockpiles and at facilities storing, handling, and transporting unconsolidated bulk materials. These benefits include less time lost to injuries and fatalities, less damage to equipment and lower costs incurred in replacing or repairing it, and lower insurance and compensation costs.

The net economic impact of the proposed regulation will depend on whether the standards being proposed in the regulation are excessive or constitute minimum safety standards in order to provide workers operating on coal stockpiles and at facilities storing, handling, and transporting unconsolidated bulk materials with a level of protection that is deemed adequate. If the standards being proposed are excessive, the proposed regulation will impose unnecessary costs on coal companies and have a net negative economic impact. If, on the other hand, these standards are the minimum safety standards required in order to provide a reasonable degree of protection to workers against injuries and fatalities, the proposed regulation is likely to have a positive economic impact. The cost of implementing the regulation appears to be broadly consistent with expenditures made to prevent morbidity and mortality in other industrial sectors.

Businesses and entities affected. The proposed regulation will affect 6 businesses involved in coal mining that operate coal stockpiles and facilities that store, handle, and transport unconsolidated bulk materials. For businesses voluntarily enforcing the more substantive aspects of the proposed regulation, the proposed regulation is not likely to impose significant additional costs. However, businesses not currently enforcing any of the required safety standards are likely to incur significant costs in meeting the requirements of the regulation.

The proposed regulation will benefit individuals operating coal stockpiles and at facilities that store, handle, and transport unconsolidated bulk materials. For individuals working at coal companies that are voluntarily enforcing the more substantive changes proposed by the regulation, the benefits are likely to be less significant than for individuals working for companies not currently enforcing these standards.

Localities particularly affected. The proposed regulation will affect all localities in Virginia. However, localities dependent on the coal mining industry will be particularly affected.

Projected impact on employment. The proposed regulation could have a negative impact on employment in the coal mining industry in Virginia. The requirements of the regulation could force coal companies not currently meeting the more substantive changes proposed in the regulation to reduce their labor force, or to exit the industry altogether, resulting in job losses.

Effects on the use and value of private property. The proposed regulation is likely to have a negative impact on the use and value of private property by imposing additional safety standards on coal mining companies operating under DMME jurisdiction. The additional standards impose additional costs and lower the asset value of these companies. However, these costs have to be balanced against the benefit to the coal mining industry of having a reputation for safe operation plus any additional savings on insurance costs and labor compensation costs.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Department of Mines Minerals and Energy in general concurs with the Department of Planning and Budget's Economic Impact Analysis statement for DMME's Regulations Governing Coal Stockpiles and Bulk Storage and Handling Facilities, 4 VAC 25-125. We have the following comments.

The Estimated Economic Impact (EIA) section states the new requirements will address no new significant environmental or public health and safety issues. DMME believes that the risk of accidents, injuries, and fatalities to miners is a significant public safety issue.

The EIA states that expected benefits and costs are balanced if the proposed standards are the minimum required given the risk of injury or death faced by miners. DMME believes that these standards are the minimum required to protect mine workers against injury, and in turn, will result in a positive economic impact.

The Localities Particularly Affected section states that the proposed regulation will affect all localities in Virginia. The businesses affected by this proposed regulation are all located in seven southwest Virginia coal-producing counties. The regulation should, therefore, not affect all localities of Virginia.

In the Projected Impact on Employment section, the analysis projects a negative effect on employment. This is inconsistent with discussion in the report that the regulation is expected to provide significant economic benefits by preventing future injuries and fatalities. DMME believes that a balanced assessment of the impact on employment should reflect both the costs and benefits and conclude that there will not be a negative effect on employment.

In the Effects on the Use and Value of Private Property section, the analysis projects a negative impact on the use and value of private property. This statement ignores the analysis in the report that the regulation may have a positive economic impact. Preventing injuries and fatalities avoids costs to injured workers and to mine operators due to medical

expenditures, lost productivity, damage to equipment and facilities, and increased insurance costs. These costs have been sufficient to cause mines to close. This has a significant effect on the use and value of those mines. Operating a safe mine through proper control of the risk of accidents and fatalities due to stockpiled materials will help avoid these negative effects, and help protect the use and value of the mine property.

Summary:

The proposed regulation establishes minimum standards to ensure the safe use of heavy equipment on coal stockpiles and in facilities that store, handle, and transport unconsolidated bulk materials and applies to coal stockpiles and facilities storing, handling, or transporting unconsolidated bulk materials directly related to coal mining activities.

The proposed regulation establishes (i) general safety requirements for coal stockpiles, including those with underlying feeders; (ii) specific work safety procedures and equipment safety requirements for coal stockpiles with underlying feeders; and (iii) safety provisions for storage bins, bunkers, hoppers, and silos where unconsolidated bulk materials are stored, handled, or transported.

CHAPTER 125.

REGULATIONS GOVERNING COAL STOCKPILES AND BULK STORAGE AND HANDLING FACILITIES.

4 VAC 25-125-10. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Bin" means a container for storage of bulk material.

"Bunker" means a vessel for the bulk storage of material; the lowermost portion is usually constructed in the form of a hopper.

"Chief" means the Chief of the Division of Mines of the Department of Mines, Minerals and Energy.

"Division" means the Division of Mines of the Department of Mines, Minerals and Energy.

"Hopper" means a vessel not primarily intended for storage into which materials are fed; usually constructed in the form of an inverted pyramid or cone terminating in an opening through which the material is discharged.

"Safety line" means a component consisting of a flexible line for connection to an anchorage at one end to hang vertically (vertical lifeline), or for connection to anchorages at both ends to stretch horizontally (horizontal lifeline), and which serves as a means for connecting other components of a personal fall arrest system to the anchorage.

"Silo" means a tall structure, usually cylindrical and of reinforced concrete construction, in which bulk material is stored and discharged through feeders that draw materials from the bottom.

"Stockpile" means any accumulation of material formed to create a reserve for loading or other purposes.

4 VAC 25-125-20. General provisions for coal stockpiles and on stockpiles with underlying feeders.

A. Stockpile design and management shall be such that materials can be safely stored and handled.

B. Stockpiles shall be maintained so as not to become unstable. Any hazardous condition that is observed on or around such areas shall be immediately reported to the mine foreman in charge. Immediate action shall be taken to correct such conditions when encountered.

C. Stockpiles and stockpile dumping locations shall be visually examined by an authorized person prior to work commencing and as frequently as ground conditions warrant. Where there is evidence of ground failure at a stockpile dumping location, loads shall be dumped a safe distance back from the edge of the unstable area of the bank and pushed to the stockpile.

D. Sufficient illumination shall be provided to maintain safe working conditions. When visibility is insufficient, the operation of mobile equipment on stockpiles shall be suspended until conditions permit sufficient visibility.

E. All employees who work on or around stockpiles shall be trained on potential hazards. Hazard training shall also be provided for anyone other than employees that perform work associated with stockpiles, including but not limited to maintenance personnel or contractors.

4 VAC 25-125-30. Safety precautions for stockpiles with underlying feeders.

A. Telephone or equivalent two-way communications shall be established between equipment operators working on stockpiles and those persons who are operating conveyors, feeders, hoppers or load-out facilities drawing from those stockpiles. Communication shall be maintained as necessary to keep such equipment operators advised of potential hazards during draw down activities.

B. No person shall travel on foot directly over areas of coal stockpiles where underlying feeders are in place, except:

1. In accordance with the provisions of subdivision D 5 of this section, or

2. On an emergency basis, under direct supervision of a certified foreman while secured by a safety line with coal stockpile feeders de-energized, locked out, and suitably tagged.

C. No person shall operate equipment on a coal stockpile directly over areas where underlying coal feeders are in place without a stockpile safety plan approved by the chief. The plan shall be submitted by the mine operator or agent and, when approved, shall be posted at the mine site. Before any person first works on stockpiles with underlying feeders, the approved plan shall be reviewed with that person. A record shall be maintained of such review for a period of two years.

D. The plan shall outline procedures to protect the health and safety of mobile equipment operators working on a stockpile or coal storage area directly over areas where underlying coal feeders are in place. Plan procedures shall be approved and shall include:

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1. A method of determining that no miners or equipment are in the affected area before starting stockpile underlying feeders;
 2. A method of determining the expected draw hole size in correlation to the stockpile size;
 3. Safe procedures for breaking through bridged cavities;
 4. Development of contingencies for safe recovery of personnel should a piece of equipment become entrapped, which shall be reviewed with all personnel during annual retraining;
 5. Safe procedures for travel by foot should it be necessary during nonemergencies;
 6. Information on how the operator will comply with the requirements of this section.
- E. The following requirements will be met where mobile equipment operators work on stockpiles with underlying feeders:
1. Beginning (with the effective date of this regulation), all mobile equipment manually operated on coal stockpiles, where there is a potential of the equipment falling into a cavity, shall be equipped with an enclosed cab fitted with chemically tempered glass and a window support system. However, glass certified to withstand 40 psi may be installed without a window support system provided that such glass is installed in a frame that provides equal strength and support. Other types of glass and window frames or support system may be used provided that an equal or greater amount of protection is afforded.
 2. Mobile equipment shall be equipped with an enclosed cab and doors and windows shall be closed and secured at all times the equipment is in operation on the stockpile.
 3. The equipment cab shall be provided with two self-contained self-rescuers. Equipment operators shall be trained in the donning and use of self-rescuers.
 4. The equipment operator shall be provided with a remote control device capable of stopping the flow of coal from the feeder and coal coming onto the stockpile. Such device shall be tested weekly.
 5. Emergency lighting shall be provided for the mobile equipment operator.
 6. Warning signs shall be posted at the entrances to all coal stockpiles with underlying coal feeders.
 7. Underlying free-flowing feeders shall be equipped with gates or other controls so that material cannot inadvertently discharge when the feeder is not activated.
 8. When pushing material over the crest of a stockpile or draw hole, the equipment shall be stopped a safe distance from the edge and other material will be used to bump the material over such area.
 9. When underlying feeders are used, the location of each draw-off point will be clearly indicated by a marker suspended directly above the underlying feeder.

10. Visual indicators shall be provided to show the mobile equipment operators which feeders are being used.

11. The equipment shall have a primary two-way communications system and a back-up communication system supplied by an independent power source.

4 VAC 25-125-40. Storage bins, bunkers, hoppers, and silos.

Storage bins, bunkers, hoppers, and silos where unconsolidated bulk materials are stored, handled or transported shall be equipped and maintained as follows:

1. Equipped with mechanical devices or other effective means of handling materials so that during normal operations persons are not required to enter or work where they are exposed to entrapment by caving or sliding of materials.

2. Equipped with supply and discharge operating controls. The controls shall be located so that spills or overruns will not endanger persons.

3. Where persons are required to move around or over any storage bin, bunker, hopper, or silo where unconsolidated bulk material is stored, handled or transported, suitable walkways or passageways shall be provided.

4. Ladders, platforms, or landings shall be provided for maintenance or inspection purposes where persons are required to enter any storage bin, bunker, hopper, or silo where unconsolidated bulk material is stored, handled or transported. No person shall enter the facility until the supply and discharge of materials has ceased and the supply and discharge equipment is de-energized, locked out and suitably tagged. Persons entering the facility shall wear a safety belt or harness equipped with a safety line. A second person, similarly equipped, shall be stationed near where the safety line is fastened and shall constantly adjust it or keep it tight as needed, with minimum slack.

VA.R. Doc. No. R02-268; Filed July 10, 2003, 11:28 a.m.

TITLE 9. ENVIRONMENT

STATE WATER CONTROL BOARD

Title of Regulation: 9 VAC 25-580. **Underground Storage Tanks: Technical Standards and Corrective Action Requirements (amending 9 VAC 25-580-10, 9 VAC 25-580-50, 9 VAC 25-580-130, 9 VAC 25-580-270, 9 VAC 25-580-320; repealing 9 VAC 25-580-290).**

Statutory Authority: §§ 62.1-44.15 and 62.1-44.34:9 of the Code of Virginia, and 40 CFR Parts 280 and 281.

Public Hearing Date: September 10, 2003 - 2 p.m.

Public comments may be submitted until 5 p.m. on October 10, 2003.

(See Calendar of Events section for additional information)

Agency Contact: Fred Cunningham, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4285, FAX (804) 698-4266, or e-mail fkcunningh@deq.state.va.us.

Basis: Legal authority for the Underground Storage Technical Standards and Corrective Action Requirements regulation comes from 42 USC §§ 6912, 6991, 6991(a) - (f) and (h), and § 62.1-44.34:9 of the Code of Virginia. Section 62.1-44.34:9 of the Code of Virginia provides the State Water Control Board with the authority to promulgate such regulations as may be necessary to carry out its powers and duties with regard to underground storage tanks in accordance with applicable federal laws and regulations.

Purpose: The purposes of the regulation are to reduce the number of releases from underground storage tanks, increase the ability to quickly detect and minimize contamination resulting from these releases, and ensure adequate cleanup of releases. Persons owning these tanks are required to provide notification to DEQ of the location, contents, and construction of these tanks. The regulation contains standards for UST system design and construction, operating requirements, and release detection. Also, the regulation contains requirements for investigating and cleaning up releases from underground storage tanks and piping.

The two goals of amending the UST Technical Regulation at this time are to (i) simplify the regulation by having it agree more closely with the federal UST regulation and (ii) bring the regulation into agreement with the Code of Virginia that has been amended since the regulation was adopted. The regulation helps to protect the health and safety of the citizens of the Commonwealth by requiring UST owners and operators to monitor their tank systems for releases and take the necessary steps to protect human health and the environment once a release has occurred. The proposed amendments will not alter the effectiveness of the regulation in protecting human health and the environment.

Substance: The proposed amendments include numerous changes to the definition sections, elimination of the requirements for a corrective action plan permit, and numerous changes that will conform the regulation to state law and federal regulation.

Issues: The proposed changes related to making the regulation consistent with Virginia law are expected to help the regulated community to better understand the regulations. These changes also are expected to benefit DEQ staff by reducing the time that staff must spend explaining the differences between the law and regulation to tank owners/operators.

The recommendation to remove the requirement for a corrective action permit is expected to benefit both the regulated community and DEQ in that it will remove an unnecessary step and streamline the process by which corrective actions may begin.

The proposed regulatory changes are not expected to place any individual or group within the Commonwealth at a disadvantage nor are these proposed changes expected to increase burdens on any individual or entity.

Fiscal Impact: The UST Technical Regulation has been implemented by the Commonwealth for over 12 years. At the present time, personnel costs for the regulated UST program total approximately \$3.8 million per year. Funding for personnel costs to administer the UST Technical Regulation comes from the Virginia Petroleum Storage Tank Fund (VPSTF) and a Federal UST/LUST grant.

The federal grant that DEQ receives for administering the UST program currently pays for approximately \$975,000 per year in personnel costs. The remaining \$2.8 million in personnel-related costs is paid by the VPSTF.

The VPSTF is a nonlapsing, revolving fund that is administered by DEQ. VPSTF provides funding to the DEQ for administering state regulatory programs authorized by Articles 9, 10, and 11 of the Virginia Water Control Law (§§ 62.1-44.34:8 through 62.1-44.34:23 of the Code of Virginia). The VPSTF also is used to provide reimbursement for cleanup of oil discharged from tanks within the Commonwealth. Monies reimbursed for cleanup of these releases is presently running around \$16 million per year.

The primary revenue source for VPSTF is a state fee on certain petroleum products including gasoline, aviation motor fuel, diesel fuel, dyed diesel fuel, kerosene, and heating oil sold in Virginia. At the present time, the fee on these fuels is 6/10 of a cent per gallon. The fee is collected by the Department of Motor Vehicles.

Owners and operators of USTs are the entities responsible for ensuring that USTs meet the requirements of the regulation and are the entities most affected by the regulation. The amendments to the regulation will have minimal impact or affect on tank owners and operators. At the present time, there are approximately 30,000 regulated USTs that are being used within the Commonwealth. A little over 6,000 different entities own these active, regulated USTs.

There are expected to be no additional costs to businesses, localities, the public or the Commonwealth to implement the amended regulation. The proposed changes in the regulation are related mostly to clarification and do not place additional requirements on tank owners or operators. Implementation of the amended regulation is not expected to increase staffing needs or staff training.

Department of Planning and Budget's Economic Impact Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007 H of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007 H requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the proposed regulation. The General Assembly mandates in § 62.1-44.34:9 of the Code of Virginia that the

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State Water Control Board promulgate regulations to carry out its powers and duties with regard to underground storage tanks. The Code of Virginia also requires that regulations so promulgated are consistent with applicable federal laws and regulations.

The proposed regulation deletes the requirement for underground storage tank (UST) owners and operators to obtain a corrective action plan permit from the Department of Environmental Quality (DEQ) before initiating action to deal with contamination of soils and/or ground water. The proposed regulation includes changes intended to make the existing regulation consistent with changes in the Code of Virginia and changes in federal UST regulations. It also makes corrections and deletes redundant language from the existing regulation.

Estimated economic impact. The proposed regulation repeals the section in the existing regulation that requires UST owners and operators to obtain a corrective action plan (CAP) permit from DEQ before undertaking any corrective action to deal with soil and/or ground water contamination. However, if required by the State Water Control Board, owners and operators of USTs will still have to submit a corrective action plan in accordance with the regulation. According to DEQ, approximately 99% of active USTs in Virginia are petroleum storage tanks. Leakage and/or spillage from these tanks could result in soil and ground water contamination and create public health and environmental hazards. The intent of the CAP permit is to ensure that the appropriate corrective action is taken to minimize the impact of leakage or spillage on the surrounding soil and ground water. At a minimum, the permit specifies the corrective action to be taken and the schedule and format for the corrective action. The permit is issued at no cost to the UST owner/operator.

DEQ believes, based on 13 years of oversight of this regulation, that CAP permits are not necessary in order for owners and operators of USTs to take appropriate corrective actions. Moreover, federal UST regulations do not require UST owners and operators to obtain a permit before initiating corrective actions. When the UST regulation was promulgated in 1989, DEQ believed that the CAP permit was needed in order to provide DEQ with the ability to authorize and enforce appropriate clean-up actions. However, since then, existing requirements for UST owners and operators to submit a Corrective Action Plan upon request by the State Water Control Board have proved adequate for authorizing and enforcing clean-up operations. Thus, DEQ believes that the CAP permit is no longer essential.

The proposed change is not likely to have significant economic impact. According to DEQ, CAP permits have not been issued since 1993. In this time, DEQ has not observed any significant problems associated with the implementation of corrective actions by owners and operators of USTs that would be addressed by the issuance of a CAP permit. Thus, removing the CAP permit requirement is not likely to reduce the effectiveness of the regulation in protecting public health and the environment. In fact, the proposed change is likely to produce some economic benefits by making the regulation consistent with current practice. Deleting the CAP permit requirement is likely to reduce confusion and streamline and

speed up the process by which corrective actions can be initiated. Moreover, to the extent the proposed regulation removes an unnecessary step and makes the regulation less burdensome, it is also likely to produce some economic benefits.

The proposed regulation incorporates changes intended to make the existing regulation consistent with changes in the Code of Virginia. The UST technical regulation was promulgated in 1989 and has not been modified since. One of the changes being proposed in order to make the regulation consistent with the Code of Virginia is the exemption of USTs storing heating oil for the purpose of on-premise consumption from the requirements of this regulation. Federal UST regulations do not require such USTs to be regulated. Prior to 1996, the Code of Virginia required such USTs with a capacity of 5,000 gallons or more to be regulated under the UST technical regulation. In 1996, the Virginia Water Control Law was amended to exclude these USTs. The proposed change is intended to make the regulation consistent with the 1996 amendment to the Virginia Water Control Law. Other changes being proposed in order to make the regulation consistent with the Code of Virginia include amendments to certain existing definitions, the inclusion of new definitions, and the removal of redundant definitions.

The proposed changes are not likely to have a significant economic impact. The changes have been mandated under the Code of Virginia for many years now and are not likely to affect current practice. To the extent that the Code-required changes help the regulated community better understand the regulation, they are likely to have a small positive economic impact.

The proposed regulation also incorporates changes intended to bring the regulation in agreement with federal UST requirements. In 1990, an amendment was made to federal UST regulations that allowed the use of overfill prevention equipment that was capable of restricting flow 30 minutes prior to overfilling, alerting the operator with a high-level alarm one minute before overfilling, or automatically shutting off flow to the tank such that none of the fittings located on top of the tank are exposed to the product due to overfilling. The amendment allowed for the use of overfill prevention equipment meeting these standards as an alternative to equipment meeting existing overfill prevention design standards. The proposed regulation incorporates the federal amendment. In addition to existing overfill prevention equipment, it allows for the use of equipment meeting the new additional overfill prevention design standards.

The proposed change is not likely to have a significant economic impact. To the extent that it provides UST owners and operators with more options for meeting overfill prevention requirements, the proposed change will produce some economic benefits. Moreover, making the regulation consistent with federal requirements is also likely to produce some economic benefits.

Businesses and entities affected. The proposed regulation will affect all UST owners and operators in Virginia. DEQ estimates that currently there are 30,000 regulated USTs in Virginia, owned by approximately 6,000 different entities. UST owners and operators will now have more options for

complying with overfill prevention requirements. Moreover, removing the CAP permit requirement is likely to reduce confusion and make it slightly easier for UST owners and operators to initiate corrective action once soil and/or ground water contamination has occurred.

Localities particularly affected. The proposed regulation will affect all localities in the Commonwealth.

Projected impact on employment. The proposed regulation is not likely to have significant impact on employment in Virginia.

Effects on the use and value of private property. The proposed regulation is not likely to have a significant impact on the use and value of private property. To the extent that it provides UST owners with more options for complying with overfill prevention requirements, it may help reduce costs and the raise the asset value of their businesses. Removal of the CAP permit requirement is likely to make the process of initiating corrective action following soil and/or ground water contamination more streamlined and to that extent reduce the costs associated with operating USTs.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The department has reviewed the economic impact analysis prepared by the Department of Planning and Budget and has no comment.

Summary:

The proposed amendments (i) bring the underground storage tanks (UST) technical standards and corrective action requirements into agreement with the Code of Virginia and the federal UST regulation and (ii) delete the requirement for tank owners/operators to obtain a Corrective Action Permit from the department prior to initiating corrective actions.

9 VAC 25-580-10. Definitions.

The following words and terms, when used in this chapter, shall have the following ~~meaning~~ *meanings* unless the context clearly indicates otherwise:

"Aboveground release" means any release to the surface of the land or to surface water. This includes, but is not limited to, releases from the aboveground portion of a UST system and aboveground releases associated with overfills and transfer operations as the regulated substance moves to or from a UST system.

"Ancillary equipment" means any devices including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps used to distribute, meter, or control the flow of regulated substances to and from an UST.

"Below ground release" means any release to the subsurface of the land and to ground water. This includes, but is not limited to, releases from the belowground portions of an underground storage tank system and belowground releases associated with overfills and transfer operations as the regulated substance moves to or from an underground storage tank.

"Beneath the surface of the ground" means beneath the ground surface or otherwise covered with earthen materials.

"Board" means the State Water Control Board.

"Building official" means the executive official of the local government building department empowered by § 36-105 of the Code of Virginia to enforce and administer the Virginia Uniform Statewide Building Code (USBC).

"Cathodic protection" is a technique to prevent corrosion of a metal surface by making that surface the cathode of an electrochemical cell. For example, a tank system can be cathodically protected through the application of either galvanic anodes or impressed current.

"Cathodic protection tester" means a person who can demonstrate an understanding of the principles and measurements of all common types of cathodic protection systems as applied to buried or submerged metal piping and tank systems. At a minimum, such persons must have education and experience in soil resistivity, stray current, structure-to-soil potential, and component electrical isolation measurements of buried metal piping and tank systems.

"CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 USC § 9601 et seq.).

"Compatible" means the ability of two or more substances to maintain their respective physical and chemical properties upon contact with one another for the design life of the tank system under conditions likely to be encountered in the UST.

"Connected piping" means all underground piping including valves, elbows, joints, flanges, and flexible connectors attached to a tank system through which regulated substances flow. For the purpose of determining how much piping is connected to any individual UST system, the piping that joins two UST systems should be allocated equally between them.

"Corrosion expert" means a person who, by reason of thorough knowledge of the physical sciences and the principles of engineering and mathematics acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. Such a person must be accredited or certified as being qualified by the National Association of Corrosion Engineers or be a registered professional engineer who has certification or licensing that includes education and experience in corrosion control of buried or submerged metal piping systems and metal tanks.

"De minimis" means trivial and beyond the intent of regulation, as that term is used at 53 Fed. Reg. 37108-37109.

~~"Department of Waste Management" means the Virginia Department of Waste Management which has jurisdiction over the proper handling and disposal of solid and hazardous wastes in the Commonwealth of Virginia.~~

"Dielectric material" means a material that does not conduct direct electrical current. Dielectric coatings are used to electrically isolate UST systems from the surrounding soils. Dielectric bushings are used to electrically isolate portions of the UST system (e.g., tank from piping).

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"Director" means the director of the Department of Environmental Quality.

"Electrical equipment" means underground equipment that contains dielectric fluid that is necessary for the operation of equipment such as transformers and buried electrical cable.

"Excavation zone" means the volume containing the tank system and backfill material bounded by the ground surface, walls, and floor of the pit and trenches into which the UST system is placed at the time of installation.

"Existing tank system" means a tank system used to contain an accumulation of regulated substances or for which installation has commenced on or before December 22, 1988. Installation is considered to have commenced if:

1. The owner or operator has obtained all federal, state, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system; and if,
2. a. Either a continuous on-site physical construction or installation program has begun; or,
b. The owner or operator has entered into contractual obligations-which cannot be cancelled or modified without substantial loss-for physical construction at the site or installation of the tank system to be completed within a reasonable time.

"Farm tank" is a tank located on a tract of land devoted to the production of crops or raising animals, including fish, and associated residences and improvements. A farm tank must be located on the farm property. "Farm" includes fish hatcheries, rangeland and nurseries with growing operations.

"Flow-through process tank" is a tank that forms an integral part of a production process through which there is a steady, variable, recurring, or intermittent flow of materials during the operation of the process. Flow-through process tanks do not include tanks used for the storage of materials prior to their introduction into the production process or for the storage of finished products or by-products from the production process.

"Free product" refers to a regulated substance that is present as a nonaqueous phase liquid (e.g., liquid not dissolved in water).

"Gathering lines" means any pipeline, equipment, facility, or building used in the transportation of oil or gas during oil or gas production or gathering operations.

"Hazardous substance UST system" means an underground storage tank system that contains a hazardous substance defined in § 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980 (42 USC § 9601 et seq.) (but not including any substance regulated as a hazardous waste under subtitle C of RCRA) or any mixture of such substances and petroleum, and which is not a petroleum UST system.

"Heating oil" means petroleum that is No. 1, No. 2, No. 4-light, No. 4-heavy, No. 5-light, No. 5-heavy, and No. 6 technical grades of fuel oil; other residual fuel oils (including Navy Special Fuel Oil and Bunker C); and other fuels when used as substitutes for one of these fuel oils. Heating oil is typically

used in the operation of heating equipment, boilers, or furnaces.

"Hydraulic lift tank" means a tank holding hydraulic fluid for a closed-loop mechanical system that uses compressed air or hydraulic fluid to operate lifts, elevators, and other similar devices.

"Liquid trap" means sumps, well cellars, and other traps used in association with oil and gas production, gathering, and extraction operations (including gas production plants), for the purpose of collecting oil, water, and other liquids. These liquid traps may temporarily collect liquids for subsequent disposition or reinjection into a production or pipeline stream, or may collect and separate liquids from a gas stream.

"Maintenance" means the normal operational upkeep to prevent an underground storage tank system from releasing product.

"Motor fuel" means petroleum or a petroleum-based substance that is motor gasoline, aviation gasoline, No. 1 or No. 2 diesel fuel, or any grade of gasohol, and is typically used in the operation of a motor engine.

"New tank system" means a tank system that will be used to contain an accumulation of regulated substances and for which installation has commenced after December 22, 1988 (See also "existing tank system").

"Noncommercial purposes" with respect to motor fuel means not for resale.

"On the premises where stored" with respect to heating oil means UST systems located on the same property where the stored heating oil is used.

"Operational life" refers to the period beginning when installation of the tank system has commenced until the time the tank system is properly closed under Part VII.

"Operator" means any person in control of, or having responsibility for, the daily operation of the UST system.

"Overfill release" is a release that occurs when a tank is filled beyond its capacity, resulting in a discharge of the regulated substance to the environment.

"Owner" means:

1. In the case of a UST system in use on November 8, 1984, or brought into use after that date, any person who owns an UST system used for storage, use, or dispensing of regulated substances; and
2. In the case of any UST system in use before November 8, 1984, but no longer in use on that date, any person who owned such UST immediately before the discontinuation of its use.

The term "owner" shall not include any person who, without participating in the management of an underground storage tank or being otherwise engaged in petroleum production, refining, and marketing, holds indicia of ownership primarily to protect the holder's security interest in the tank.

"Person" means an individual, trust, firm, joint stock company, corporation, including a government corporation, partnership,

association, any state or agency thereof, municipality, county, town, commission, political subdivision of a state, any interstate body, consortium, joint venture, commercial entity, the government of the United States or any unit or agency thereof.

"Petroleum UST system" means an underground storage tank system that contains petroleum or a mixture of petroleum with de minimis quantities of other regulated substances. Such systems include those containing motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

"Pipe" or "piping" means a hollow cylinder or tubular conduit that is constructed of nonearthen materials.

"Pipeline facilities (including gathering lines)" are new and existing pipe rights-of-way and any associated equipment, facilities, or buildings.

"RCRA" means the federal Resource Conservation and Recovery Act of 1976 as amended (42 USC § 6901 et seq.).

"Regulated substance" means an element, compound, mixture, solution, or substance that, when released into the environment, may present substantial danger to the public health or welfare, or the environment. The term "regulated substance" includes:

1. Any substance defined in § 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980 (42 USC § 9601 et seq.), but not any substance regulated as a hazardous waste under subtitle C of the Resource Conservation and Recovery Act (RCRA) of 1976 (42 USC § 6901 et seq.); and

2. Petroleum, including crude oil or any fraction thereof, that is liquid at standard conditions of temperature and pressure (60°F and 14.7 pounds per square inch absolute). The term "regulated substance" includes but is not limited to petroleum and petroleum-based substances comprised of a complex blend of hydrocarbons derived from crude oil through processes of separation, conversion, upgrading, and finishing, such as motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

"Release" means any spilling, leaking, emitting, discharging, escaping, leaching or disposing from an UST into ground water, surface water or subsurface soils.

"Release detection" means determining whether a release of a regulated substance has occurred from the UST system into the environment or into the interstitial space between the UST system and its secondary barrier or secondary containment around it.

"Repair" means to restore a tank or UST system component that has caused a release of product from the UST system.

"Residential tank" is a tank located on property used primarily for dwelling purposes.

"SARA" means the Superfund Amendments and Reauthorization Act of 1986.

"Septic tank" is a water-tight covered receptacle designed to receive or process, through liquid separation or biological digestion, the sewage discharged from a building sewer. The effluent from such receptacle is distributed for disposal through the soil and settled solids and scum from the tank are pumped out periodically and hauled to a treatment facility.

"Storm water or waste water collection system" means piping, pumps, conduits, and any other equipment necessary to collect and transport the flow of surface water run-off resulting from precipitation, or domestic, commercial, or industrial wastewater to and from retention areas or any areas where treatment is designated to occur. The collection of storm water and wastewater does not include treatment except where incidental to conveyance.

"Surface impoundment" is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials) that is not an injection well.

"Tank" is a stationary device designed to contain an accumulation of regulated substances and constructed of nonearthen materials (e.g., concrete, steel, plastic) that provide structural support.

"Underground area" means an underground room, such as a basement, cellar, shaft or vault, providing enough space for physical inspection of the exterior of the tank situated on or above the surface of the floor.

"Underground release" means any belowground release.

"Underground storage tank" or "UST" means any one or combination of tanks (including underground pipes connected thereto) that is used to contain an accumulation of regulated substances, and the volume of which (including the volume of underground pipes connected thereto) is 10% or more beneath the surface of the ground. This term does not include any:

1. Farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes;
2. Tank used for storing heating oil for consumption on the premises where stored, ~~except for tanks having a capacity of more than 5,000 gallons and used for storing heating oil;~~
3. Septic tank;
4. Pipeline facility (including gathering lines) regulated under:
 - a. The Natural Gas Pipeline Safety Act of 1968 (49 USC App. 1671, et seq.);
 - b. The Hazardous Liquid Pipeline Safety Act of 1979 (49 USC App. 2001, et seq.); or
 - c. Which is an intrastate pipeline facility regulated under state laws comparable to the provisions of the law referred to in subdivisions 4 a or 4 b of this definition;
5. Surface impoundment, pit, pond, or lagoon;
6. Storm water or wastewater collection system;
7. Flow-through process tank;

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8. Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations; or

9. Storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor.

The term "underground storage tank" or "UST" does not include any pipes connected to any tank which is described in subdivisions 1 through 9 of this definition.

"Upgrade" means the addition or retrofit of some systems such as cathodic protection, lining, or spill and overfill controls to improve the ability of an underground storage tank system to prevent the release of product.

"UST system" or "tank system" means an underground storage tank, connected underground piping, underground ancillary equipment, and containment system, if any.

"Wastewater treatment tank" means a tank that is designed to receive and treat an influent wastewater through physical, chemical, or biological methods.

9 VAC 25-580-50. Performance standards for new UST systems.

Owners and operators must obtain a permit, the required inspections and a Certificate of Use issued in accordance with the provisions of the Virginia Uniform Statewide Building Code. No UST system shall be installed or placed into use without the owner and operator having obtained the required permit, inspections and Certificate of Use from the building official under the provisions of the Virginia Uniform Statewide Building Code (§ 36-97 et seq. of the Code of Virginia).

In the case of state-owned facilities the Department of General Services shall function as the building official in accordance with § 36-98.1 of the Code of Virginia.

In the case of federal facilities the building official must be contacted. Owners and operators must obtain a permit, the required inspections and a Certificate of Use must be issued in accordance with the provisions of the Virginia Uniform Statewide Building Code.

In order to prevent releases due to structural failure, corrosion, or spills and overfills for as long as the UST system is used to store regulated substances, all owners and operators of new UST systems must meet the following requirements.

1. Tanks.

Each tank must be properly designed and constructed, and any portion underground that routinely contains product must be protected from corrosion, in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory as specified below:

a. The tank is constructed of fiberglass-reinforced plastic;

NOTE: The following industry codes may be used to comply with subdivision 1 a of this section: Underwriters Laboratories Standard 1316, "Standard for Glass-Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products"; Underwriters Laboratories

of Canada CAN4-S615-M83, "Standard for Reinforced Plastic Underground Tanks for Petroleum Products"; or American Society of Testing and Materials Standard D4021-86, "Standard Specification for Glass-Fiber-Reinforced Polyester Underground Petroleum Storage Tanks."

b. The tank is constructed of steel and cathodically protected in the following manner:

(1) The tank is coated with a suitable dielectric material;

(2) Field-installed cathodic protection systems are designed by a corrosion expert;

(3) Impressed current systems are designed to allow determination of current operating status as required in subdivision 3 of 9 VAC 25-580-90; and

(4) Cathodic protection systems are operated and maintained in accordance with 9 VAC 25-580-90; or

NOTE: The following codes and standards may be used to comply with subdivision 1 b of this section:

(a) Steel Tank Institute "Specification for STI-P3 System of External Corrosion Protection of Underground Steel Storage Tanks";

(b) Underwriters Laboratories Standard 1746, "Corrosion Protection Systems for Underground Storage Tanks";

(c) Underwriters Laboratories of Canada CAN4-S603-M85, "Standard for Steel Underground Tanks for Flammable and Combustible Liquids," and CAN4-G03.1-M85, "Standard for Galvanic Corrosion Protection Systems for Underground Tanks for Flammable and Combustible Liquids," and CAN4-S631-M84, "Isolating Bushings for Steel Underground Tanks Protected with Coatings and Galvanic Systems"; or

(d) National Association of Corrosion Engineers Standard RP-02-85, "Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems," and Underwriters Laboratories Standard 58 "Standard for Steel Underground Tanks for Flammable and Combustible Liquids."

c. The tank is constructed of a steel-fiberglass-reinforced-plastic composite; or

NOTE: The following industry codes may be used to comply with subdivision 1 c of this section: Underwriters Laboratories Standard 1746, "Corrosion Protection Systems for Underground Storage Tanks," or the Association for Composite Tanks ACT-100, "Specification for the Fabrication of FRP Clad Underground Storage Tanks."

d. The tank construction and corrosion protection are determined by the board to be designed to prevent the release or threatened release of any stored regulated substance in a manner that is no less protective of human

health and the environment than subdivisions 1 a through c of this section.

2. Piping. The piping that routinely contains regulated substances (e.g., fill pipes, product lines) and is in contact with the ground must be properly designed, constructed, and protected from corrosion in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory as specified below:

a. The piping is constructed of fiberglass-reinforced plastic.

NOTE: The following codes and standards may be used to comply with subdivision 2 a of this section:

(1) Underwriters Laboratories Subject 971, "UL Listed Non-Metal Pipe";

(2) Underwriters Laboratories Standard 567, "Pipe Connectors for Flammable and Combustible and LP Gas";

(3) Underwriters Laboratories of Canada Guide ULC-107, "Glass Fiber Reinforced Plastic Pipe and Fittings for Flammable Liquids"; and

(4) Underwriters Laboratories of Canada Standard CAN 4-S633-M81, "Flexible Underground Hose Connectors."

b. The piping is constructed of steel and cathodically protected in the following manner:

(1) The piping is coated with a suitable dielectric material;

(2) Field-installed cathodic protection systems are designed by a corrosion expert;

(3) Impressed current systems are designed to allow determination of current operating status as required in subdivision 3 of 9 VAC 25-580-90; and

(4) Cathodic protection systems are operated and maintained in accordance with 9 VAC 25-580-90; or

NOTE: The following codes and standards may be used to comply with subdivision 2 b of this section:

(a) National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code";

(b) American Petroleum Institute Publication 1615, "Installation of Underground Petroleum Storage Systems";

(c) American Petroleum Institute Publication 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems"; and

(d) National Association of Corrosion Engineers Standard RP-01-69, "Control of External Corrosion on Submerged Metallic Piping Systems."

c. The piping construction and corrosion protection are determined by the board to be designed to prevent the release or threatened release of any stored regulated substance in a manner that is no less protective of human

health and the environment than the requirements in subdivisions 2 a through b of this section.

3. Spill and overfill prevention equipment.

a. Except as provided in subdivision 3 b of this section, to prevent spilling and overfilling associated with product transfer to the UST system, owners and operators must use the following spill and overfill prevention equipment:

(1) Spill prevention equipment that will prevent release of product to the environment when the transfer hose is detached from the fill pipe (for example, a spill catchment basin); and

(2) Overfill prevention equipment that will:

(a) Automatically shut off flow into the tank when the tank is no more than 95% full; ~~or~~

(b) Alert the transfer operator when the tank is no more than 90% full by restricting the flow into the tank or triggering a high-level alarm; ~~or~~

(c) *Restrict the flow 30 minutes prior to overfilling, alert the operator with a high level alarm one minute before overfilling, or automatically shut off flow into the tank so that none of the fittings located on top of the tank are exposed to product due to overfilling.*

b. Owners and operators are not required to use the spill and overfill prevention equipment specified in subdivision 3 a of this section if:

(1) Alternative equipment is used that is determined by the board to be no less protective of human health and the environment than the equipment specified in subdivision 3 a (1) or (2) of this section; or

(2) The UST system is filled by transfers of no more than 25 gallons at one time.

4. Installation. All tanks and piping must be properly installed in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory and in accordance with the manufacturer's instructions.

NOTE: Tank and piping system installation practices and procedures described in the following codes may be used to comply with the requirements of subdivision 4 of this section:

a. American Petroleum Institute Publication 1615, "Installation of Underground Petroleum Storage System";

b. Petroleum Equipment Institute Publication RP100, "Recommended Practices for Installation of Underground Liquid Storage Systems"; or

c. American National Standards Institute Standard B31.3, "Petroleum Refinery Piping," and American National Standards Institute Standard B31.4 "Liquid Petroleum Transportation Piping System."

NOTE: These industry codes require that prior to bringing the system into use the following tests be performed: (i) tank tightness test (air); (ii) pipe tightness test (air or

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hydrostatic); and (iii) precision system test in accordance with NFPA 329 (detection of .05 gal/hr leak rate).

5. Certification of installation. All owners and operators must ensure that one or more of options a through d of the following methods of certification, testing, or inspection is performed, and a Certificate of Use has been issued in accordance with the provisions of the Virginia Uniform Statewide Building Code to demonstrate compliance with subdivision 4 of this section. A certification of compliance on the UST Notification form must be submitted to the board in accordance with 9 VAC 25-580-70.

- a. The installer has been certified by the tank and piping manufacturers;
- b. The installation has been inspected and certified by a registered professional engineer with education and experience in UST system installation;
- c. All work listed in the manufacturer's installation checklists has been completed; or
- d. The owner and operator have complied with another method for ensuring compliance with subdivision 4 of this section that is determined by the board to be no less protective of human health and the environment.

6. Release detection. Release detection shall be provided in accordance with Part IV of this chapter.

9 VAC 25-580-130. General requirements for all petroleum and hazardous substance UST systems.

A. Owners and operators of new and existing UST systems must provide a method, or combination of methods, of release detection that:

- 1. Can detect a release from any portion of the tank and the connected underground piping that routinely contains product;
- 2. Is installed, calibrated, operated, and maintained in accordance with the manufacturer's instructions, including routine maintenance and service checks for operability or running condition; and
- 3. Meets the performance requirements in 9 VAC 25-580-160 or 9 VAC 25-580-170, with any performance claims and their manner of determination described in writing by the equipment manufacturer or installer. In addition, methods used after December 22, 1990, except for methods permanently installed prior to that date, must be capable of detecting the leak rate or quantity specified for that method in subsections 2, 3 and 4 of 9 VAC 25-580-160 or subdivisions 1 and 2 of 9 VAC 25-580-170 with a probability of detection of 0.95 and a probability of false alarm of 0.05.

B. When a release detection method operated in accordance with the performance standards in 9 VAC 25-580-160 or 9 VAC 25-580-170 indicates a release may have occurred, owners and operators must notify the board in accordance with Part V of this chapter.

C. Owners and operators of all UST systems must comply with the release detection requirements of this part by December 22 of the year listed in the following table:

SCHEDULE FOR PHASE-IN OF RELEASE DETECTION

Year system was installed	Year when release detection is required (by December 22 of the year indicated)				
	1989	1990	1991	1992	1993
Before 1965 or date unknown	RD*	P			
1965-1969		P/RD			
1970-1974		P	RD		
1975-1979		P		RD	
1980-1988		P			RD

New tanks (after December 22, 1988) immediately upon installation.

P = Must begin release detection for all pressurized piping in accordance with subdivision 2 a of 9 VAC 25-580-140.

RD = Must begin release detection for tanks and suction piping in accordance with subsection 1 and subdivision 2 b of 9 VAC 25-580-140, and 9 VAC 25-580-150.

~~* = Heating oil tanks greater than 5,000 gallons capacity installed before 1965 or date unknown are allowed until December 22, 1990, to comply with this requirement.~~

D. Any existing UST system that cannot apply a method of release detection that complies with the requirements of this part must complete the closure procedures in Part VII by the date on which release detection is required for that UST system under subsection C of this section.

9 VAC 25-580-270. Free product removal.

At sites where investigations under subdivision A 6 of 9 VAC 25-580-250 indicate the presence of free product, owners and operators must remove free product to the maximum extent practicable as determined by the board while continuing, as necessary, any actions initiated under 9 VAC 25-580-240 through 9 VAC 25-580-260, or preparing for actions required under 9 VAC 25-580-280 ~~through 9 VAC 25-580-290~~. In meeting the requirements of this section, owners and operators must:

- 1. Conduct free product removal in a manner that minimizes the spread of contamination into previously uncontaminated zones by using recovery and disposal techniques appropriate to the hydrogeologic conditions at the site, and that properly treats, discharges or disposes of recovery by-products in compliance with applicable local, state and federal regulations;
- 2. Use abatement of free product migration as a minimum objective for the design of the free product removal system;
- 3. Handle any flammable products in a safe and competent manner to prevent fires or explosions; and
- 4. Unless directed to do otherwise by the board, prepare and submit to the board, within 45 days after confirming a

release, a free product removal report that provides at least the following information:

- a. The name of the persons responsible for implementing the free product removal measures;
- b. The estimated quantity, type, and thickness of free product observed or measured in wells, bore holes, and excavations;
- c. The type of free product recovery system used;
- d. Whether any discharge will take place on-site or off-site during the recovery operation and where this discharge will be located;
- e. The type of treatment applied to, and the effluent quality expected from, any discharge;
- f. The steps that have been or are being taken to obtain necessary permits for any discharge; and
- g. The disposition of the recovered free product.

9 VAC 25-580-290. Corrective action plan (CAP) permit. (Repealed.)

~~A. Owners and operators shall file a complete application for and obtain a Corrective action plan (CAP) permit from the board for any corrective action plan required by 9 VAC 25-580-280 of this chapter.~~

~~B. If the corrective action plan involves a point source discharge of pollutants to surface waters, the CAP permit application shall be processed in accordance with the procedures and the requirements set forth in the board's permit regulation (9 VAC 25-30-10 et seq.) and the provisions of that regulation shall apply mutatis mutandis. The CAP permit shall include, but not be limited to, a schedule and format for the corrective action plan, the corrective action plan, and all of the pertinent conditions set forth in 9 VAC 25-30-10 et seq.~~

~~C. If the corrective action plan involves only the management of pollutants that are not point source discharges to surface waters, the owner and operator shall be exempt from the requirement to obtain a Virginia Pollution Abatement (VPA) permit under 9 VAC 25-30-10 et seq. conditioned upon:~~

- ~~1. The owner and operator shall obtain the CAP permit which shall contain the conditions, and be processed in accordance with the procedures and requirements, set forth in 9 VAC 25-30-10 et seq.;~~
- ~~2. The CAP permit shall include, where appropriate, a schedule and format for the corrective action plan and the corrective action plan; and~~
- ~~3. The application shall be publicly noticed in accordance with 9 VAC 25-580-300 and subsections A and B of 9 VAC 25-30-10 et seq.~~

~~D. If the corrective action plan involves the introduction of pollutants into publicly owned treatment works, owners and operators shall also comply with the board's and any publicly owned treatment work's pretreatment program requirements.~~

9 VAC 25-580-320. Permanent closure and changes-in-service.

Owners and operators must obtain a permit and the required inspections in accordance with the Virginia Uniform Statewide Building Code (§ 36-47 et seq. of the Code of Virginia).

A permit from the building official must be obtained prior to permanent tank closure or a change-in-service. No UST system shall be permanently closed or changed-in-service unless and until the system is inspected in accordance with the provisions of the Virginia Uniform Statewide Building Code (§ 36-47 et seq. of the Code of Virginia).

If such closure is in response to immediate corrective actions that necessitate timely tank removal, then the building official must be notified and the official's directions followed until a permit is issued.

In the case of state-owned facilities the Department of General Services shall function as the building official in accordance with § 36-98.1 of the Code of Virginia.

In the case of federal facilities the building official must be contacted. Owners and operators must obtain a permit and the required inspections in accordance with the provisions of the Virginia Uniform Statewide Building Code.

- 1. Owners and operators must within 30 days after either permanent closure or a change-in-service submit an amended UST notification form (Appendix I) to the board.
- 2. The required assessment of the excavation zone under 9 VAC 25-580-330 must be performed after notifying the building official but before completion of the permanent closure or a change-in-service.
- 3. To permanently close a tank, owners and operators must empty and clean it by removing all liquids and accumulated sludges. When the owner or operator suspects that the residual sludges are hazardous in nature the Department of ~~Waste Management~~ *Environmental Quality* regulations shall be followed to facilitate the proper treatment, storage, manifesting, transport, and disposal. All tanks taken out of service permanently must also be either removed from the ground or filled with an inert solid material.
- 4. Continued use of an UST system to store a nonregulated substance is considered a change-in-service. Before a change-in-service, owners and operators must empty and clean the tank by removing all liquid and accumulated sludge and conduct a site assessment in accordance with 9 VAC 25-580-330.

NOTE: The following cleaning and closure procedures may be used to comply with this section:

- a. American Petroleum Institute Recommended Practice 1604, "Removal and Disposal of Used Underground Petroleum Storage Tanks";
- b. American Petroleum Institute Publication 2015, "Cleaning Petroleum Storage Tanks";
- c. American Petroleum Institute Recommended Practice 1631, "Interior Lining of Underground Storage Tanks,"

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may be used as guidance for compliance with this section; and

d. The National Institute for Occupational Safety and Health "Criteria for a Recommended Standard *** Working in Confined Space" may be used as guidance for conducting safe closure procedures at some hazardous substance tanks.

VA.R. Doc. No. R02-308; Filed July 22, 2003, 8:37 a.m.

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Title of Regulation: 9 VAC 25-770. Financial Responsibility Requirements for Mitigation Associated with Tidal Dredging Projects (adding 9 VAC 25-770-10 through 9 VAC 25-770-180).

Statutory Authority: § 62.1-44.15 of the Code of Virginia.

Public Hearing Date: September 10, 2003 - 2 p.m.

Public comments may be submitted until 5 p.m. on October 10, 2003.

(See Calendar of Events section for additional information)

Agency Contact: Ellen Gilinsky, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4375, FAX (804) 698-4032, or e-mail egilinsky@deq.state.va.us.

Basis: The basis for this regulation is amendments to § 62.1-44.15 of the Code of Virginia, passed by the 2002 General Assembly (HB91/SB327), as follows:

"(5c) Any certificate issued by the Board under this chapter relating to dredging projects governed under Chapter 12 (§ 28.2-1200 et seq.) or Chapter 13 (§ 28.2-1300 et seq.) of Title 28.2 may be conditioned upon a demonstration of financial responsibility for the completion of compensatory mitigation requirements. Financial responsibility may be demonstrated by a letter of credit, a certificate of deposit or a performance bond executed in a form approved by the Board. If the U.S. Army Corps of Engineers requires demonstration of financial responsibility for the completion of compensatory mitigation required for a particular project, then the mechanism and amount approved by the U.S. Army Corps of Engineers shall be used to meet this requirement."

Purpose: The purpose of the proposed regulation is to specify the mechanisms by which the State Water Control Board may require demonstration of financial responsibility for the completion of compensatory mitigation requirements for dredging projects in tidal waters permitted under the Virginia Water Protection Permit (VWPP) Program. Financial responsibility may be demonstrated by letter of credit, certificate of deposit, or performance bond. When the U.S. Army Corps of Engineers requires demonstration of financial responsibility, then the mechanism and amount approved by the Corps shall be used to meet this requirement. By ensuring a means of compensating for wetlands impacts, water quality will be protected, which is essential to the protection of the health, safety or welfare of citizens.

Substance: This regulation specifies the mechanisms by which the board may require such financial assurances to ensure completion of mitigation requirements for tidal dredging projects, but would allow that this requirement could be satisfied by bonding required by the Corps, to avoid duplication. These requirements would apply only to tidal dredging projects and not to nontidal dredging projects or any other types of projects requiring VWP permits.

Issues: VWP permits require compensatory mitigation for unavoidable impacts to tidal wetlands and subaqueous bottoms disturbed by dredging activities. In some cases, particularly when multiple property owners are involved in dredging of coves for boating access, these mitigation projects are not completed due to a lack of financial resources or clear responsibility. The U.S. Army Corps of Engineers sometimes but not always requires bonding to ensure project completion. The advantage to the public and the Commonwealth of having this regulation in place is ensuring that mitigation projects for tidal dredging projects are completed at no expense to the Commonwealth or to the general public. There are no disadvantages to the public or the Commonwealth.

Localities Particularly Affected. Areas in Tidewater Virginia are particularly affected by the proposed regulation. This regulation applies only to persons required to obtain or modify a VWP permit pursuant to the VWP Regulation, 9 VAC 25-210, for completion of dredging projects in tidal waters governed under Chapter 12 (§ 28.2-1200 et seq.) or Chapter 13 (§ 28.2-1300 et seq.) of Title 28.2 of the Code of Virginia. The Department of Environmental Quality anticipates that this regulation will affect less than 10 applicants per year.

Public Participation: In addition to any other comments, the board is seeking comments on the costs and benefits of the proposal and the impacts of the regulation on farm or forest lands.

Anyone wishing to submit written comments for the public comment file may do at the public hearing or by mail. Written comments should be signed by the commenter and include the name and address of the commenter. In order to be considered, the comments must be received by the close of the comment period. Oral comments may be submitted at the public hearing.

Fiscal Impact: There would be no significant costs to the Department of Environmental Quality associated with implementation of this regulation, and any additional costs could be funded from existing resources. Any person or persons conducting tidal dredging projects that are permitted by a VWP permit and require compensation will be affected by this regulation and will have to provide financial assurance, with the exception of state and federal government entities. This regulation is expected to impact less than 10 permittees per year; some of them may be small businesses.

Department of Planning and Budget's Economic Impact Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007 H of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007 H requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or

other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the proposed regulation. The General Assembly allows in Chapter 49 of the 2002 Acts of Assembly that any certificate issued by the State Water Control Board related to dredging projects governed under Chapter 12 and Chapter 13 of Title 28.2 may be conditioned on a demonstration of financial responsibility for the completion of compensatory mitigation requirements.

The proposed regulation specifies mechanisms by which financial responsibility for the completion of compensatory mitigation for tidal dredging projects permitted under the Virginia Water Protection (VWP) permit program can be demonstrated. Under the proposed regulation surety bonds, letters of credit, and certificates of deposit are acceptable financial instruments through which the financial responsibility requirements can be met. The amount of the surety bond, letter of credit, or certificate of deposit is to be based on a cost estimate, approved by the State Water Control Board (SWCB), of implementing the compensatory mitigation project. The proposed regulation also allows in-lieu fee fund donations and mitigation bank credit purchases as acceptable ways of fulfilling the financial responsibility requirements. The amount of the donation and/or the number of mitigation credits to be purchased is determined by the SWCB. In cases where the U.S. Army Corps of Engineers (USACE) requires bonding to ensure project completion, the amount and the financial mechanism approved by USACE will be considered adequate to meet the financial responsibility requirements of the proposed regulation.

The proposed regulation will replace the emergency regulation in effect since December 4, 2002. A number of changes have been made to the emergency regulation enacted in December 2002, including exempting state and federal government projects from the requirements of the regulation and requiring that proof of having met the financial responsibility requirements be submitted to the SWCB at least 60 days before the onset of any activity in the affected areas.

The proposed regulation also includes additional language clarifying various aspects of the regulation.

Estimated economic impact. The proposed regulation specifies acceptable means of financial assurance for tidal dredging projects that require the implementation of compensatory mitigation plans. Such projects are permitted under the VWP program and by the USACE. The financial assurance requirements proposed by the regulation are intended to ensure that permittees have adequate financial resources in order to implement any required compensatory mitigation projects. The requirement for compensatory mitigation is determined by DEQ on a case-by-case basis at the time the VWP permit is issued.

The acceptable forms of financial assurance that meet the financial responsibility requirements for mitigation associated with tidal dredging projects are:

- Financial responsibility is to be demonstrated by a surety bond, a letter of credit, or a certificate of deposit. The amount of the surety bond, letter of credit, or certificate of deposit is to be based on a detailed cost estimate of the compensatory mitigation activities to be undertaken. The proposed regulation provides guidelines for the determination of mitigation cost estimates.
- Financial responsibility can also be demonstrated by donations to in-lieu fee funds and purchase of mitigation bank credits. In-lieu fee funds refer to monetary funds operated by nonprofit organizations and government agencies that receive financial contributions from individuals affecting wetlands or streams while conducting an authorized permitted activity. The money so received is spent on providing consolidated compensatory mitigation for wetlands and streams affected by the permitted activity. Mitigation banks refer to sites providing consolidated compensatory mitigation that conform to state and federal laws and are operated under a signed banking agreement. The donations to in-lieu fee funds and/or the purchase of mitigation bank credits are to be made prior to the commencement of any dredging activity in the permitted areas. The amount of the donation and the number of credits to be purchased are to be determined by the SWCB based on a detailed cost estimate of implementing the compensatory mitigation plan. Proof of the donation and/or purchase of the mitigation bank credits are to be submitted to SWCB for approval at least 60 days prior to the start of dredging activities in the permitted areas.
- When the USACE requires demonstration of financial responsibility, the mechanism and amount approved by them will be deemed adequate to meet the requirements of this regulation. Tidal dredging projects generally receive permits for the USACE and the SWCB. In order to avoid duplication, no additional financial assurances will be required if the USACE already requires such assurances.

All federal and state tidal dredging projects are exempt from the requirements of this regulation, as they are deemed to have the requisite financial strength and stability to meet the financial responsibility requirements being addressed by the proposed regulation.

The Department of Environmental Quality (DEQ) estimates that the proposed regulation is likely to affect fewer than 10 applicants for VWP permits per year. According to DEQ, not all individuals and entities applying for VWP permits for tidal dredging projects will be required to meet the requirements of this regulation as not all tidal dredging projects require compensatory mitigation. For example, dredging projects that only affect nonvegetated areas under surface waters are not required to undertake compensatory mitigation. Thus, only those individuals and entities applying for VWP permits for tidal dredging projects that require a compensatory mitigation will be affected by the proposed regulation.

According to DEQ, there have been a few instances when compensatory mitigation projects have had to be abandoned due a lack of financial resources and/or a lack of clear

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responsibility. Under these circumstances, DEQ has no way of enforcing the completion of the compensatory mitigation project. The enforcement problem has been particularly acute when multiple property owners have been involved in dredging coves for boating access.

The proposed regulation is likely to have the benefit of providing better enforcement of current policy. Current policy is intended to protect the environment from degradation resulting from dredging in tidal areas. However, the lack of effective enforcement tools may allow some permittees to engage in dredging activities harmful to the environment without undertaking any form mitigation. To the extent that permittees are not implementing compensatory mitigation, they impose costs on the citizens of Virginia, either by degrading the environment or by the state implementing some form of mitigation in order to prevent the degradation. Under the proposed regulation, VWP permit applicants who are required to implement compensatory mitigation under the conditions of their permit will have to present financial assurances guaranteeing adequate resources for the completion of compensatory mitigation before they begin any dredging activities. By requiring financial guarantees at the time the permit is issued or modified, the proposed regulation will ensure that permittees fulfill the terms and conditions under which the VWP permits are issued.

However, the proposed regulation is likely to impose additional costs on VWP permit applicants. In the case of financial instruments such as surety bonds and letters of credit, applicants will be required to pay a risk premium. The risk premium reflects the market's assessment of the risk of the applicant defaulting on compensatory mitigation requirements. For example, if the market determines that certain individuals and entities are more likely to default than others, the risk premium charged to them is likely to be higher than that charged to individuals and entities with a lower default risk. Moreover, requiring VWP permit applicants to meet financial assurance requirements well in advance of when the mitigation is actually carried out could impose further costs. According to DEQ, mitigation projects are usually implemented a year after the permit is first granted. Thus, individuals and entities required to meet the financial assurance requirements are forfeiting income that could have been earned had the money used for in-lieu fee fund donations, bank mitigation credit purchases, and certificates of deposit been put to other, more lucrative, uses in the time between when the permit is issued and the mitigation project is implemented.

The net economic impact will depend on whether the additional costs imposed by the regulation are greater than or less than the benefits of enforcing existing policy and providing the environment with a slightly greater degree of protection. Mitigation projects for tidal dredging projects cost anywhere between \$4,000 and \$300,000. The additional cost incurred in paying risk premiums and in lost income depend on the market's assessment of the risk of default and the rates of return that could have been earned by these individuals and entities had they invested the money elsewhere. While the data required for precise estimates of these costs and benefits do not currently exist, the costs imposed by the proposed regulation are not likely to be very large. The expected

benefits will depend on the number and magnitude of the mitigation projects that would have been abandoned had the proposed regulation not been promulgated. Given that there have been only a few instances of mitigation projects not being implemented, the expected benefits of the proposed regulation are not likely to be very large. Overall, we would expect the economic impact of the proposed regulation to be quite modest.

The proposed regulation also makes a number of changes to the emergency regulation in effect since December 4, 2002. (i) It exempts state and federal tidal dredging projects from the requirements of this regulation as they are deemed to have the requisite financial strength and stability to meet financial responsibility requirements. The proposed change is not likely to have a significant economic impact. There have not been any cases of state and federal compensatory mitigation projects being abandoned due to a lack of resources. (ii) It also requires applicants to submit proof of having met the financial responsibility requirements to the SWCB at least 60 days before the onset of any dredging activity. The emergency regulation required the proof to be submitted prior to the start of any dredging, but did not include a 60-day minimum requirement. The additional compliance requirement was added in order to give DEQ enough time to review the financial assurance documents submitted by applicants. The proposed change is not likely to have a significant economic impact. Even under the emergency regulation, applicants are required to submit financial assurance documents. The difference is that they will now be required to submit it earlier than they might have done otherwise. To the extent that the proposed change allows DEQ to conduct a more thorough review of the submitted documents, it is likely to have a small positive economic impact.

Businesses and entities affected. The proposed regulation will affect all businesses and entities required to obtain or modify a VWP permit for tidal dredging projects that require compensatory mitigation. DEQ estimates that the proposed regulation will affect less than 10 applicants per year. These applicants will now be required to demonstrate financial responsibility for the completion of compensatory mitigation requirements at the time the permit is issued.

Localities particularly affected. The proposed regulation will particularly affect localities in the Tidewater region.

Projected impact on employment. The proposed regulation is not likely to have a significant impact on employment.

Effects on the use and value of private property. The proposed regulation is likely to impose some additional costs on individuals and businesses seeking to obtain a VWP permit for tidal dredging projects that require compensatory mitigation. They will now be required to demonstrate financial responsibility for the completion of any compensatory mitigation projects required as a condition of their VWP permit at the time the permit is issued. The proposed regulation may increase the cost of operation and hence lower the asset value of some individuals and businesses not currently meeting these requirements.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Department has reviewed the economic impact analysis prepared by the Department of Planning and Budget and has no comment.

Summary:

The proposed regulation specifies the mechanisms by which the State Water Control Board may require demonstration of financial responsibility for the completion of compensatory mitigation requirements for dredging projects in tidal waters permitted under the Virginia Water Protection Permit (VWPP) Program. Financial responsibility may be demonstrated by a letter of credit, certificate of deposit, or performance bond. When the U.S. Army Corps of Engineers requires demonstration of financial responsibility, then the mechanism and amount approved by the Corps shall be used to meet this requirement. This proposed regulation will replace the emergency regulation that became effective on December 4, 2002.

CHAPTER 770.
VIRGINIA FINANCIAL RESPONSIBILITY REQUIREMENTS
FOR MITIGATION ASSOCIATED WITH TIDAL DREDGING
PROJECTS.

PART I.
DEFINITIONS.

9 VAC 25-770-10. Definitions.

Unless a different meaning is required by the context, the following terms as used in this chapter shall have the following meanings:

"Applicant" means a person applying for a VWP individual or general permit.

"Aquatic resources" or "aquatic environment" mean surface waters and the habitat they provide, including both plant and animal communities.

"Board" means the State Water Control board.

"Compensation" or "compensatory mitigation" means actions taken that provide some form of substitute aquatic resource for the impacted aquatic resource.

"Compensatory mitigation plan" means the written plan describing the proposed compensatory mitigation activities required by 9 VAC 25-210-80 of the Virginia Water Protection Permit Program Regulation.

"Creation" means the establishment of a wetland or other aquatic resource where one did not formerly exist.

"Director" means the Director of the Department of Environmental Quality (DEQ) or an authorized representative.

"Dredged material" means material that is excavated or dredged from surface waters.

"Dredging" means a form of excavation in which material is removed or relocated from beneath surface waters.

"Enhancement" means activities conducted in existing wetlands or other aquatic resources that increase one or more aquatic functions or values.

"Excavate" or "excavation" means ditching, dredging, or mechanized removal of earth, soil or rock.

"Fill" means replacing portions of surface water with upland, or changing the bottom elevation of a surface water for any purpose, by placement of any pollutant or material including but not limited to rock, sand, earth, and man-made materials and debris.

"Fill material" means any pollutant that replaces portions of surface water with dry land or that changes the bottom elevation of a surface water for any purpose.

"General permit" means a permit authorizing a specified category of activities.

"In-lieu fee fund" means a monetary fund operated by a nonprofit organization or governmental agency that receives financial contributions from persons impacting wetlands or streams pursuant to an authorized permitted activity and that expends the moneys received to provide consolidated compensatory mitigation for permitted wetland or stream impacts.

"Law" means the State Water Control Law of Virginia.

"Minimization" means lessening impacts by reducing the degree or magnitude of the proposed action and its implementation.

"Mitigation" means sequentially avoiding and minimizing impacts to the maximum extent practicable, and then compensating for remaining unavoidable impacts of a proposed action.

"Mitigation bank" means a site providing off-site, consolidated compensatory mitigation that is developed and approved in accordance with all applicable federal and state laws or regulations for the establishment, use and operation of mitigation banks, and is operating under a signed banking agreement.

"Mitigation banking" means compensating for unavoidable wetland or stream losses in advance of development actions through the sale, purchase or use of credits from a mitigation bank.

"Permittee" means the person who holds a VWP individual or general permit.

"Person" means any firm, corporation, association, or partnership, one or more individuals, or any governmental unit or agency of it.

"Practicable" means available and capable of being done after taking into consideration cost, existing technology and logistics in light of overall project purposes.

"Preservation" means the protection of resources in perpetuity through the implementation of appropriate legal and physical mechanisms.

"Restoration" means the reestablishment of a wetland or other aquatic resource in an area where it previously existed. Wetland restoration means the reestablishment of wetland hydrology and vegetation in an area where a wetland previously existed. Stream restoration means the process of converting an unstable, altered or degraded stream corridor,

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including adjacent areas and floodplains, to its natural conditions.

"Significant alteration or degradation of existing wetland acreage or function" means human-induced activities that cause either a diminution of the areal extent of the existing wetland or cause a change in wetland community type resulting in the loss of more than minimal degradation of its existing ecological functions.

"State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands.

"Surface water" means all state waters that are not ground water as defined in § 62.1-255 of the Code of Virginia.

"USACE" means the United States Army Corps of Engineers.

"VWP permit" means an individual or general permit issued by the board under § 62.1-44.15:5 of the Code of Virginia that authorizes activities otherwise unlawful under § 62.1-44.5 of the Code of Virginia or otherwise serves as the Commonwealth of Virginia's § 401 certification.

"Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

PART II. GENERAL INFORMATION.

9 VAC 25-770-20. Applicability.

This regulation applies to all persons required to obtain or modify a VWP permit pursuant to the Virginia Water Protection Permit Program Regulation, 9 VAC 25-210, for completion of dredging projects in tidal waters governed under Chapter 12 (§ 28.2-1200 et seq.) or Chapter 13 (§ 28.2-1300 et seq.) of Title 28.2 of the Code of Virginia.

9 VAC 25-770-30. Compliance date.

An applicant for a VWP permit for completion of a dredging project in tidal waters must file a financial responsibility mechanism or proof of mitigation bank credit purchase or in-lieu fee fund donation with the board with any required final compensatory mitigation plan. The compensatory mitigation plan and financial responsibility documentation shall be submitted by the permittee and approved by the board prior to the onset of any dredging activities in permitted impact areas.

9 VAC 25-770-40. Revocation or suspensions.

Failure to provide or maintain adequate evidence of financial responsibility in accordance with this regulation shall be a basis for termination of a VWP permit. Termination of a VWP permit shall be in accordance with 9 VAC 25-210-180.

9 VAC 25-770-50. Forfeitures.

Forfeiture of any financial obligation imposed pursuant to this chapter shall not relieve any holder of a VWP permit from any obligations to comply with the provisions of the Virginia Water Protection Permit Program Regulation (9 VAC 25-210) and

any other applicable regulations or any other legal obligations for the consequences of abandoning the project.

9 VAC 25-770-60. Transfer of permit.

The new permittee must submit evidence of financial responsibility to the board in accordance with this chapter within 60 days of the transfer of the permit from the existing permittee to the new permittee. When a transfer of the permit occurs, the old permittee shall continue to comply with the requirements of this chapter until the new permittee has demonstrated that he is complying with the requirements of this chapter. The new permittee shall demonstrate compliance with this chapter within 60 days of the date of the transfer of the permit. Upon demonstration to the board by the new permittee of compliance with this chapter, the board shall notify the old permittee that he or she no longer needs to comply with this chapter as of the date of demonstration.

PART III. COMPENSATORY MITIGATION PLAN AND FINANCIAL RESPONSIBILITY CRITERIA.

9 VAC 25-770-70. Compensatory mitigation requirements.

A. Compensatory mitigation for any project subject to a VWP permit must include measures to avoid and reduce impacts to surface waters to the maximum extent practicable, and where impacts cannot be avoided, the means by which compensation will be accomplished to achieve no net loss of wetland acreage and function.

B. The applicable compensatory mitigation standards are described in 9 VAC 25-210-80 and 9 VAC 25-210-115 of the Virginia Water Protection Permit Program Regulation. All aspects of the compensatory mitigation plan, including documentation of financial responsibility, shall be finalized, submitted and approved by the board prior to the onset of any dredging activities in permitted impact areas.

9 VAC 25-770-80. Cost estimate for compensatory mitigation activities other than in-lieu fee fund donations or mitigation bank credit purchases.

A. The permittee shall prepare for approval by the board a detailed written estimate of the cost of implementing compensatory mitigation activities. The written cost estimate shall be submitted concurrently with the final compensatory mitigation plan.

1. The compensatory mitigation plan cost estimate shall equal the full cost of implementation of the plan.

2. The compensatory mitigation cost estimate shall be based on and include the costs to the permittee of hiring a third party to implement the compensatory mitigation plan. The third party may not be either a parent corporation or subsidiary of the permittee.

3. The compensatory mitigation cost estimate may not incorporate any salvage value that may be realized by the sale of materials, facility structures or equipment, land or other facility assets at the time of implementation of the plan.

B. If the length of the estimated project life exceeds one year, the permittee shall add to the total cost estimate an amount to represent an appropriate forecasted rate of inflation over the period covering the life of the project.

C. During the term of the VWP permit, the permittee shall revise the cost estimate concurrently with any revision made to the compensatory mitigation plan or at any time unforeseen circumstances occur that increase the implementation cost. The revised implementation cost estimate shall be adjusted for inflation as specified in subsection B of this section.

D. The permittee may reduce the cost estimate and the amount of financial responsibility provided under this chapter, if it can be demonstrated that the cost estimate exceeds the cost of implementation of the compensatory mitigation plan. The permittee shall obtain the approval of the board prior to reducing the amount of financial responsibility.

9 VAC 25-770-90. Cost estimates for in-lieu fee fund donations and mitigation bank credit purchases.

A. Permittees with compensatory mitigation plans that provide for donations to in-lieu fee funds must submit to the board, proof that the entity is willing to accept the contribution along with a detailed, written cost estimate as part of the conceptual mitigation plan.

B. Permittees with compensatory mitigation plans that provide for purchase of mitigation bank credits must provide to the board, proof that the selected bank has available credits, along with a detailed, written cost estimate as part of the conceptual mitigation plan.

9 VAC 25-770-100. Payment of in-lieu fee fund donations and mitigation bank credit purchases.

A. Permittees with compensatory mitigation plans that provide for donations to in-lieu fee funds or mitigation bank credit purchases shall make the entire donation or purchase before the onset of activity in the permitted impact areas. Permittees shall submit documentation of the payment or donation to the board for approval a minimum of 10 days prior to onset of activity in permitted areas.

B. A permittee may satisfy the requirements of this section, wholly or in part, by submitting a photocopy of the documentation submitted to the USACE pursuant to § 404 of the Clean Water Act (33 USC § 1251 et seq., as amended in 1987) documenting the donation or purchase for the current project along with a photocopy of the document issued by the USACE indicating approval of the documentation, if applicable. Any documentation of the in-lieu fee fund donation or mitigation banking credit purchase pursuant to this subsection must demonstrate clearly that the donation or purchase was made to provide compensatory mitigation for the project that is the subject of the VWP permit.

9 VAC 25-770-110. Allowable financial mechanisms for compensatory mitigation activities other than in-lieu fee fund donations or mitigation bank credit purchases.

A. The mechanisms used to demonstrate evidence of financial responsibility shall ensure that the funds necessary to meet the costs of completing compensatory mitigation requirements for the permitted project as described in 9 VAC 25-770-70 will

be available whenever they are needed. Permittees shall choose from the options specified in 9 VAC 25-770-120 through 9 VAC 25-770-150. Financial responsibility mechanisms shall be in the amount equal to the cost estimate approved by the board.

B. The permittee shall provide continuous coverage to implement the compensatory mitigation plan until released from financial responsibility requirements by the board.

C. The director may reject the proposed evidence of financial responsibility if the mechanism submitted does not adequately assure that funds will be available to complete the necessary compensatory mitigation activities. The permittee shall be notified in writing within 60 days of receipt of a complete financial responsibility submission of the tentative decision to accept or reject the proposed evidence.

9 VAC 25-770-120. Surety bond.

A. A permittee may satisfy the requirements of this chapter by obtaining a surety bond that conforms to the requirements of this section and by submitting an originally signed duplicate of the bond to the board. The surety company issuing the bond shall be licensed to operate as a surety in the Commonwealth of Virginia and be among those listed as acceptable sureties on federal bonds in the latest Circular 570 of the U.S. Department of the Treasury.

B. Under the terms of the bond, the surety will become liable on the bond obligation when the permittee fails to perform as guaranteed by the bond.

C. The bond shall guarantee that the permittee or any other authorized person will:

1. Implement compensatory mitigation in accordance with the approved compensatory mitigation plan and other requirements in any VWP permit for the project;
2. Implement the compensatory mitigation plan following an order to do so issued by the board or by a court.

D. The surety bond shall guarantee that the permittee shall provide alternate evidence of financial responsibility as specified in this article within 60 days after receipt by the board of a notice of cancellation of the bond from the surety.

E. If the approved cost estimate increases to an amount greater than the amount of the penal sum of the bond, the permittee shall, within 60 days after the increase, cause the penal sum of the bond to be increased to an amount at least equal to the new estimate and submit a revised mechanism to the board. Whenever the cost estimate decreases, the penal sum may be reduced to the amount of the cost estimate following written approval by the board. Notice of an increase or decrease in the penal sum shall be sent to the board by certified mail within 60 days after the change.

F. The bond shall remain in force for its term unless the surety sends written notice of cancellation by certified mail to the permittee and to the board. Cancellation cannot occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by the board as shown on the signed return receipt. The surety shall provide written notification to the board by certified mail no less than 120 days

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prior to the expiration date of the bond, that the bond will expire and the date the bond will expire.

G. The board shall cash the surety bond if it is not replaced 60 days prior to expiration with alternate evidence of financial responsibility acceptable to the board or if the permittee fails to fulfill the conditions of the bond.

H. In regards to implementation of a compensatory mitigation plan either by the permittee, by an authorized third party, or by the surety, proper implementation of a compensatory mitigation plan shall be deemed to have occurred when the board determines that compensatory mitigation has been completed. Such implementation shall be deemed to have been completed when the provisions of the permittee's approved compensatory mitigation plan have been executed and the provisions of any other permit requirements or enforcement orders relative to the compensatory mitigation plan have been complied with.

I. The surety bond shall be worded as described in 9 VAC 25-770-190 A, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

9 VAC 25-770-130. Letter of credit.

A. A permittee may satisfy the requirements of this chapter by obtaining an irrevocable standby letter of credit that conforms to the requirements of this section and by submitting an originally signed duplicate of the letter of credit to the board. The issuing institution shall be an entity that has the authority to issue letters of credit in the Commonwealth of Virginia and whose letter-of-credit operations are regulated and examined by a federal agency or the State Corporation Commission.

B. The letter of credit shall be irrevocable and issued for a period of at least one year in an amount at least equal to the current cost estimate for implementation of the compensatory mitigation plan. The letter of credit shall provide that the expiration date will be automatically extended for a period of at least one year. If the issuing institution decides not to extend the letter of credit beyond the current expiration date, it shall, at least 120 days before the expiration date, notify both the permittee and the board by certified mail of that decision. The 120-day period will begin on the date of receipt by the board as shown on the signed return receipt. If the letter of credit is canceled by the issuing institution, the permittee shall obtain alternate evidence of financial responsibility to be in effect prior to the expiration date of the letter of credit.

C. Whenever the approved cost estimate increases to an amount greater than the amount of credit, the permittee shall, within 60 days of the increase, cause the amount of credit to be increased to an amount at least equal to the new estimate and submit a revised mechanism to the board. Whenever the cost estimate decreases, the letter of credit may be reduced to the amount of the new estimate following written approval by the board.

D. The board shall cash the letter of credit if it is not replaced 60 days prior to expiration with alternate evidence of financial responsibility acceptable to the board or if the permittee has failed to implement compensatory mitigation in accordance

with the approved plan or other permit or special order requirements.

E. In regards to implementation of a compensatory mitigation plan either by the permittee or by an authorized third party, proper implementation of a compensatory mitigation plan shall be deemed to have occurred when the board determines that compensatory mitigation has been completed. Such implementation shall be deemed to have been completed when the provisions of the permittee's approved compensatory mitigation plan have been executed and the provisions of any other permit requirements or enforcement orders relative to the compensatory mitigation plan have been complied with.

F. The permittee may cancel the letter of credit only if alternate evidence of financial responsibility acceptable to the board is substituted as specified in this chapter or if the permittee is released by the board from the requirements of this regulation.

G. The board shall return the original letter of credit to the issuing institution for termination when:

1. The permittee substitutes acceptable alternate evidence of financial responsibility for implementation of the compensatory mitigation plan as specified in this chapter; or
2. The board notifies the permittee that he is no longer required by this chapter to maintain evidence of financial responsibility for implementation of the compensatory mitigation plan for the project.

H. The letter of credit shall be worded as described in 9 VAC 25-770-190 B, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

9 VAC 25-770-140. Certificate of deposit.

A. A permittee may satisfy the requirements of this chapter, wholly or in part, by obtaining a certificate of deposit and assigning all rights, title and interest of the certificate of deposit to the board, conditioned so that the permittee shall comply with the approved compensatory mitigation plan filed for the project. The issuing institution shall be an entity that has the authority to issue certificates of deposit in the Commonwealth of Virginia and whose operations are regulated and examined by a federal agency or the State Corporation Commission (Commonwealth of Virginia). The permittee must submit the originally signed assignment and the originally signed certificate of deposit, if applicable, to the board.

B. The amount of the certificate of deposit shall be at least equal to the current compensatory mitigation cost estimate for the project for which the permit application has been filed or any part thereof not covered by other financial responsibility mechanisms. The permittee shall maintain the certificate of deposit and assignment until all activities required by the approved compensatory mitigation plan have been completed.

C. The permittee shall be entitled to demand, receive and recover the interest and income from the certificate of deposit as it becomes due and payable as long as the market value of the certificate of deposit used continues to at least equal the

amount of the current cost estimate for compensatory mitigation activities.

D. The board shall cash the certificate of deposit if the permittee has failed to implement compensatory mitigation in accordance with the approved plan or other permit or special order requirements.

E. In regards to implementation of a compensatory mitigation plan either by the permittee or by an authorized third party, proper implementation of a compensatory mitigation plan shall be deemed to have occurred when the board determines that compensatory mitigation has been completed. Such implementation shall be deemed to have been completed when the provisions of the permittee's approved compensatory mitigation plan have been executed and the provisions of any other permit requirements or enforcement orders relative to the compensatory mitigation plan have been complied with.

F. Whenever the approved compensatory mitigation cost estimate increases to an amount greater than the amount of the certificate of deposit, the permittee shall, within 60 days of the increase, cause the amount of the certificate of deposit to be increased to an amount at least equal to the new estimate or obtain another certificate of deposit to cover the increase. Whenever the cost estimate decreases, the permittee may reduce the amount of the certificate of deposit to the new estimate following written approval by the board.

G. The board shall return the original assignment and certificate of deposit, if applicable, to the issuing institution for termination when:

1. The permittee substitutes acceptable alternate evidence of financial responsibility for implementation of the compensatory mitigation plan as specified in this chapter; or
2. The board notifies the permittee that he is no longer required by this chapter to maintain evidence of financial responsibility for implementation of the compensatory mitigation plan for the project.

H. The assignment shall be worded as described in 9 VAC 25-770-190 C, except that instructions in brackets shall be replaced with the relevant information and the brackets deleted.

9 VAC 25-770-150. Federal documentation.

A permittee may satisfy the requirements of this chapter, wholly or in part, by submitting a photocopy of the financial responsibility documentation submitted to the USACE pursuant to § 404 of the Clean Water Act (33 USC § 1251 et seq., as amended in 1987) for the current project along with a photocopy of the document issued by the USACE indicating approval of the financial responsibility, if applicable. Any demonstration of financial responsibility pursuant to this subsection must apply clearly to the project and compensatory mitigation activities that are the subject of the VWP permit.

9 VAC 25-770-160. Release of permittee from the financial responsibility requirements.

A. The permittee shall submit a notice that compensatory mitigation has been completed in accordance with the

requirements of the approved compensatory mitigation plan, permit or other order, within 60 days of completion of all compensatory mitigation requirements. Unless the board has reason to believe that the compensatory mitigation activities have not been implemented in accordance with the appropriate plan or other requirements, the board shall notify the permittee in writing that the permittee is no longer required to maintain evidence of financial responsibility for the project. Such notice shall release the permittee only from the requirements for financial responsibility for the project; it does not release the permittee from legal responsibility for meeting the compensatory mitigation requirements.

B. Where a VWP permit for the project is no longer required under law, the board shall notify the permittee in writing that the permittee is no longer required to maintain evidence of financial responsibility for the project. Such notice shall release the permittee only from the requirements for financial responsibility for the project.

9 VAC 25-770-170. Incapacity of Financial Providers, permittees.

A. A permittee shall notify the director by certified mail of the commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming the permittee as debtor, within 10 days after commencement of the proceeding.

B. A permittee who fulfills the requirements of this chapter by obtaining a letter of credit, a surety bond, or a certificate of deposit will be deemed to be without the required evidence of financial responsibility in the event of bankruptcy of the issuing institution, or a suspension or revocation of the authority of the institution issuing a surety bond, letter of credit, or certificate of deposit to issue such mechanisms. The permittee shall establish other financial responsibility within 60 days of such event.

9 VAC 25-770-180. Delegation of authority.

The Director of the Department of Environmental Quality or a designee acting for him may perform any act of the board provided under this chapter, except as limited by § 62.1-44.14 of the Code of Virginia.

9 VAC 25-770-190. Wording of the instruments.

A. Wording of surety bond.

SURETY BOND

Date bond executed: _____

Period of coverage: _____

Effective date: _____

Principal: **(legal name and address of owner or operator)** _____

Type of organization: **(insert "individual" "joint venture," "partnership," "corporation," or appropriate identification of type of organization)** _____

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State of incorporation (if applicable): _____

Surety: **(name(s) and business address)** _____

Scope of Coverage:

(List the name of the project and the physical address where the project is located and VWP permit number. List the coverage guaranteed by the bond: "for completion of compensatory mitigation activities")

Penal sum of bond: \$ _____

Surety's bond number: _____

Know All Persons by These Presents, that we, the Principal and Surety(ies), hereto are firmly bound to the Department of Environmental Quality, Commonwealth of Virginia, ("DEQ") in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sums jointly and severally only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sums only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas said Principal is required under § 62.1-44.15 (5c) of the State Water Control Law of the Code of Virginia to demonstrate financial responsibility to implement a plan to complete the required compensatory mitigation activities described in a permit, order or regulations;

Now, therefore, the conditions of the obligation are such that if the Principal shall faithfully implement the compensatory mitigation plan in accordance with the applicable regulations and the Director of the DEQ's instructions to implement the plan for the project described above, or if the Principal shall provide alternate documentation of financial responsibility, acceptable to DEQ and obtain the Director's written approval of such assurance, within 60 days after the date the notice of cancellation is received by the Director of the DEQ from the Surety(ies), then this obligation shall be null and void; otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond when the Principal has failed to fulfill the conditions described above. Upon notification by the Director of the DEQ that the owner or operator has failed to fulfill the conditions above or that the DEQ has determined that the Principal has failed to complete the project described above, the Surety(ies) shall either implement the compensatory mitigation plan or forfeit the full amount of the penal sum as directed by the Director of the DEQ under 9 VAC 25-770-120.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the penal sum shown on the face of the bond, but in no event shall the

obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal and to the Director of the DEQ, Commonwealth of Virginia, P. O. Box 10009, Richmond, Virginia 23240-0009 provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by the Principal and Director of the DEQ as shown on the signed return receipt.

In Witness Whereof, the Principal and Surety(ies) have executed this Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in 9 VAC 25-770-190 A as such regulations were constituted on the date this bond was executed.

PRINCIPAL

(Signature(s))

(Name(s))

(Title(s))

(Corporate seal)

CORPORATE SURETY(IES)

(Name and address)

State of Incorporation:

Liability limit: \$ _____

(Signature(s))

(Name(s) and title(s))

(Corporate seal)

(For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.)

Bond premium: \$ _____

B. Wording of letter of credit.

IRREVOCABLE STANDBY LETTER OF CREDIT

(Name and address of issuing institution)

Beneficiary:

Director
Department of Environmental Quality (DEQ)
P. O. Box 10009
629 E. Main Street
Richmond, Virginia 23240-0009

Dear Sir or Madam: We hereby establish our Irrevocable Standby Letter of Credit No. _____ in your favor, at the request and for the account of **(permittee)** of **(address)** up to

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the aggregate amount of **(in words)** U.S. dollars, **\$(insert dollar amount)**, available upon presentation of

(1) your sight draft, bearing reference to this letter of credit, No. _____ and

(2) your signed statement reading as follows:

"I certify that the amount of the draft is payable pursuant to regulations issued under authority of § 62.1- 44.15 (5c) of the Code of Virginia."

This letter of credit may be drawn on to implement the compensatory mitigation plan for the project identified below in the amount of **(in words)** \$ **(insert dollar amount)**. **(Name and physical address of the project assured by this mechanism and VWP permit number.)**

This letter of credit is effective as of **(date)** and shall expire on **(date)**, but such expiration date shall be automatically extended for a period of **(at least the length of the original term)** on **(expiration date)** and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify the Director of the DEQ and the permittee by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event that the permittee is so notified, any unused portion of the credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by the Director of the DEQ and the permittee, as shown on the signed return receipt.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall submit the amount of the draft directly to DEQ in accordance with your instructions.

I hereby certify that I am authorized to execute this letter of credit on behalf of (issuing institution) and I hereby certify that the wording of this letter of credit is identical to the wording required in 9 VAC 25-770-190 B as such regulations were constituted on the date shown immediately below.

Attest:

Signature Date

Name Title

This credit is subject to **(insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published by the International Chamber of Commerce," or "the Uniform Commercial Code")**.

C. Wording of assignment of certificate of deposit.

ASSIGNMENT OF CERTIFICATE OF DEPOSIT ACCOUNT

City _____, 20 _____

FOR VALUE RECEIVED, the undersigned assigns all right, title and interest to the Virginia Department of Environmental Quality (DEQ), Commonwealth of Virginia and its successors and assigns the Virginia DEQ the principal amount of the

instrument, including all moneys deposited now or in the future to that instrument, indicated below:

() If checked here, this assignment includes all interest now and hereafter accrued.

Certificate of Deposit Account No. _____

This assignment is given as security to the Virginia DEQ in the amount of

_____ Dollars (\$ _____).

Continuing Assignment. This assignment shall continue to remain in effect for all subsequent terms of the automatically renewable certificate of deposit.

Assignment of Document. The undersigned also assigns any certificate or other document evidencing ownership to the Virginia DEQ.

Additional Security. This assignment shall secure the payment of any financial responsibility obligations of the **(name of permittee)** to the Virginia DEQ for compensatory mitigation activities at the **(project name and permit number)** located at (physical address).

Application of Funds. The undersigned agrees that all or any part of the funds of the indicated account or instrument may be applied to the payment of any and all financial responsibility obligations of **(name of permittee)** to the Virginia DEQ for compensatory mitigation activities at the **(project name and address)**. The undersigned authorizes the Virginia DEQ to withdraw any principal amount on deposit in the indicated account or instrument including any interest, if indicated, and to apply it in the Virginia DEQ's discretion to fund compensatory mitigation at the **(project name)** in the event of **(permittee name)**'s failure to implement compensatory mitigation activities to the DEQ's satisfaction. The undersigned agrees that the Virginia DEQ may withdraw any principal and/or interest from the indicated account or instrument without demand or notice. The undersigned agrees to assume any and all loss of penalty due to federal regulations concerning the early withdrawal of funds. Any partial withdrawal of principal or interest shall not release this assignment.

The party or parties to this Assignment set their hand or seals, or if corporate, has caused this assignment to be signed in its corporate name by its duly authorized officers and its seal to be affixed by authority of its board of Directors the day and year above written.

SEAL

(Owner)

(Print name)

SEAL

(Owner)

(Print name)

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THE FOLLOWING SECTION IS TO BE COMPLETED BY
THE BRANCH OR LENDING OFFICE:

The signature(s) as shown above compare correctly with the
name(s) as shown on record as owner(s) of the Certificate of
Deposit indicated above. The above Assignment has been
properly recorded by placing a hold in the amount of
\$ _____ for the benefit of the Virginia DEQ.

() If checked here, the accrued interest on the Certificate of
Deposit indicated above has been maintained to capitalize
versus being mailed by check or transferred to a deposit
account.

I certify that the wording of this Assignment is identical to the
wording required in 9 VAC 25-770-190 C as such regulations
were constituted on the date shown immediately below.

(Signature) _____ (Date)

_____ (Print name)

_____ (Title)

VA.R. Doc. No. R03-74; Filed July 22, 2003, 8:38 a.m.

FINAL REGULATIONS

For information concerning Final Regulations, see Information Page.

Symbol Key

Roman type indicates existing text of regulations. *Italic type* indicates new text. Language which has been stricken indicates text to be deleted. [Bracketed language] indicates a change from the proposed text of the regulation.

TITLE 4. CONSERVATION AND NATURAL RESOURCES

DEPARTMENT OF CONSERVATION AND RECREATION

REGISTRAR'S NOTICE: The following regulatory action is exempt from the Administrative Process Act in accordance with (i) § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved, and (ii) § 2.2-4006 A 3 of the Code of Virginia, which excludes regulations that consist only of changes in style or form or corrections of technical errors. The Department of Conservation and Recreation will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 4 VAC 5-10. Regulatory Public Participation Procedures (amending 4 VAC 5-10-10, 4 VAC 5-10-20 and 4 VAC 5-10-30; repealing 4 VAC 50-10-40).

Statutory Authority: §§ 2.2-4007 and 10.1-104 of the Code of Virginia.

Effective Date: September 10, 2003

Summary:

The amendments conform the regulations to changes in Virginia statutory law, correct technical errors and reflect changes in department internal practices and procedures, and changes in style or form.

Agency Contact: Leon E. App, Acting Deputy Director, Department of Conservation and Recreation, 203 Governor Street, Suite 302, Richmond, VA 23219, telephone (804) 786-6124, FAX (804) 786-6141 or e-mail leonapp@dcr.state.va.us.

4 VAC 5-10-10. Definitions.

A. The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

"Administrative Process Act" means Chapter 4-4 40 (§ 9-6-44 2.2-4000 et seq.) of Title 9 2.2 of the Code of Virginia.

"Agency" means the Department of Conservation and Recreation, including staff, established pursuant to Virginia law that implements programs and provides administrative support to the approving authority.

"Approving authority" means the Department of Conservation and Recreation established pursuant to Virginia law as the legal authority to adopt regulations.

"Director" means the Director of the Department of Conservation and Recreation or his designee.

"Formal hearing" means agency processes other than those informational or factual inquiries of an informal nature provided in § 9-6-14:7.4 2.2-4007 of the Administrative Process Act and includes *the* only opportunity for private parties to submit factual proofs in evidential hearings as provided in § 9-6-14:8 2.2-4009 of the Administrative Process Act.

"Locality particularly affected" means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

"Participatory approach" means a method for the use of (i) standing advisory committees, (ii) ad hoc advisory groups or panels, (iii) consultation with groups or individuals registering interest in working with the agency, or (iv) any combination thereof in the formation and development of regulations for agency consideration. When an ad hoc advisory group is formed, the group shall include representatives of the regulated community and the general public. The decisions as to the membership of the group shall be at the discretion of the director.

"Person" means an individual, a corporation, a partnership, an association, a governmental body, a municipal corporation, or any other legal entity.

"Public hearing" means an informal proceeding, held in conjunction with the Notice of Public Comment *Period* and similar to that provided for in § 9-6-14:7.4 2.2-4007 of the Administrative Process Act, to afford persons an opportunity to submit views and data relative to regulations on which a decision of the approving authority is pending.

"Public meeting" means an informal proceeding *conducted by the agency in conjunction with the Notice of Intended Regulatory Action to afford persons an opportunity to submit comments relative to intended regulatory actions.*

"Virginia law" means the provisions found in the Virginia statutory law authorizing the approving authority, director, or agency to make regulations or containing procedural requirements thereof.

B. Unless specifically defined in Virginia law or in this chapter, terms used shall have the meanings commonly ascribed to them.

4 VAC 5-10-20. General.

A. The procedures in 4 VAC 50-10-30 of this chapter shall be used for soliciting the input of interested persons in the formation and development, amendment or repeal of regulations in accordance with the Administrative Process Act, *applicable Governor's Executive Orders, the Virginia Register Act, and the Regulations of the Virginia Code Commission for Implementing the Virginia Register Act.* This chapter does not apply to regulations exempted from the provisions of the Administrative Process Act § 9-6-14:1 A and B 2.2-4002 or

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excluded from the operation of Article 2 of the Administrative Process Act § ~~9-6-14:4.1-C~~ 2.2-4006.

B. The failure of any person to receive any notice or copies of any documents provided under these guidelines shall not affect the validity of any regulation.

C. Any person may petition the approving authority for the adoption, amendment or repeal of a regulation. The petition, at a minimum, shall contain the following information:

1. Name of petitioner;
2. Petitioner's mailing address and telephone number;
3. Petitioner's interest in the proposed action;
4. ~~Recommended regulation or addition, deletion or amendment to Recommendations for language to be added to or deleted from~~ a specific regulation or regulations;
5. Statement of need and justification for the proposed action;
6. Statement of impact on the petitioner and other affected persons; and
7. Supporting documents, as applicable.

~~The approving authority shall provide a written response to such petition within 180 days from the date the petition was received. At the discretion of the approving authority or the director, the procedures in 4 VAC 5-10-30 may be supplemented to provide additional public participation in the regulation adoption process or as necessary to meet federal requirements.~~

4 VAC 5-10-30. Public participation procedures.

A. The agency shall establish and maintain a list or lists consisting of persons expressing an interest in the adoption, amendment or repeal of regulations. Any person wishing to be placed on any list may do so by *electronic notification or by writing the agency*. In addition, the agency, at its discretion, may add to any list any person, organization or publication it believes will be interested in participating in the promulgation of regulations. Individuals and organizations may be periodically requested to indicate their desire to continue to receive documents or be deleted from a list. *It will be up to the interested parties to notify the department if there is a change in their contact information.* Individuals and organizations may be periodically requested to indicate their desire to continue to receive documents or be deleted from a list. Individuals and organizations may be deleted from any list at the request of the individual or organization, or at the discretion of the agency when mail is returned as undeliverable. *Parties may also contact the Commonwealth's Regulatory Town Hall website to receive electronic notices of regulatory actions.*

B. Whenever the approving authority so directs, the agency may commence the regulation adoption process and proceed to draft a proposal according to these procedures.

C. The director shall use the participatory approach to assist in the development of the proposal or use one of the following alternatives:

1. Proceed without using the participatory approach if the approving authority specifically authorizes the director to proceed without using the participatory approach.

2. Include in the Notice of Intended Regulatory Action (NOIRA) a statement inviting comment on whether the director should use the participatory approach to assist the agency in the development of the proposal. If the director receives written responses from at least five persons during the associated comment period indicating that the director should use the participatory approach, the director shall use the participatory approach requested. Should different approaches be requested, the director shall determine the specific approach to be utilized.

D. The agency shall issue a NOIRA whenever it considers the adoption, amendment or repeal of any regulation.

1. The NOIRA shall include, at least, the following:

- a. A description of the subject matter of the planned regulation.
- b. A description of the intent of the planned regulation.
- c. A brief statement as to the need for regulatory action.
- d. A brief description of alternatives available, if any, to meet the need.
- e. A request for comments on the intended regulatory action, to include any ideas to assist the agency in the development of any proposal.
- f. A request for comments on the costs and benefits of the stated alternatives or other alternatives.
- g. A statement of the director's intent to hold at least one public hearing on the proposed regulation after it is published in The Virginia Register of Regulations.
- h. A statement inviting comment on whether the director should use the participatory approach to assist the agency in the development of any proposal. Including this statement shall only be required when the director makes a decision to pursue the alternative provided in subdivision C 2 of this section.

2. The agency shall hold at least one public meeting whenever it considers the adoption, amendment or repeal of any regulation unless the approving authority specifically authorizes the ~~agency~~ director to proceed without holding a public meeting.

In those cases where a public ~~meeting(s)~~ *meeting or meetings* will be held, the NOIRA shall also include the date, not to be less than 30 days after publication in The Virginia Register of Regulations, time and place of the public ~~meeting(s)~~ *meeting or meetings*.

3. The public comment period for NOIRAs under this section shall be no less than 30 days after publication in The Virginia Register of Regulations.

E. The agency shall disseminate the NOIRA to the public via the following:

1. Distribution to the Registrar of Regulations for publication in The Virginia Register of Regulations.

2. *Distribution through posting the document on the Commonwealth's Regulatory Town Hall website.*

~~2-~~ 3. *Distribution of the NOIRA, or notification of how to obtain a copy of the document electronically, by mail or e-mail to persons on the list(s) or lists, established under subsection A of this section.*

F. *The agency shall make provision for receiving comments pertaining to the NOIRA by regular mail, the Internet, or facsimile.* After consideration of public input, the agency may complete the draft proposed regulation and any supporting documentation required for review. If the participatory approach is being used, the draft *proposed* regulation shall be developed in consultation with the participants. A summary or copies of the comments received in response to the NOIRA shall be distributed to the participants during the development of the draft regulation. This summary or copies of the comments received in response to the NOIRA shall also be distributed to the approving authority.

G. Upon approval of the draft proposed regulation by the approving authority, the agency shall publish a Notice of Public Comment (~~NOPC~~) *Period* and the proposal for public comment.

H. The ~~NOPC~~ *Notice of Public Comment Period* shall include, at least, the following:

1. The notice of the opportunity to comment on the proposed regulation, location of where copies of the draft may be obtained and name, address and telephone number of the individual to contact for further information about the proposed regulation.

2. A request for comments on the costs and benefits of the proposal.

3. The identity of any locality particularly affected by the proposed regulation.

4. A statement that an analysis of the following has been conducted by the agency and is available to the public upon request:

a. A statement of purpose: the rationale or justification for the new provisions of the regulation, from the standpoint of the public's health, safety or welfare.

b. A statement of estimated impact:

(1) Projected number and types of regulated entities or persons affected.

(2) Projected cost, expressed as a dollar figure or range, to regulated entities (and to the public, if applicable) for implementation and compliance. In those instances where the agency is unable to quantify projected costs, it shall offer qualitative data, if possible, to help define the impact of the regulation. Such qualitative data shall include, if possible, an example or examples of the impact of the proposed regulation on a typical member or members of the regulated community.

(3) Projected cost to the agency for implementation and enforcement.

(4) The beneficial impact the regulation is designed to produce.

c. An explanation of need for the proposed regulation and potential consequences that may result in the absence of the regulation.

d. An estimate of the impact of the proposed regulation upon small businesses as defined in § ~~9-199~~ 2.2-2279 B of the Code of Virginia or organizations in Virginia.

e. A description of provisions of the proposed regulation which are more restrictive than applicable federal requirements, together with the reason why the more restrictive provisions are needed.

f. A discussion of alternative approaches that were considered to meet the need the proposed regulation addresses, and a statement as to whether the agency believes that the proposed regulation is the least burdensome alternative to the regulated community that fully meets the stated purpose of the proposed regulation.

g. A schedule setting forth when, after the effective date of the regulation, the agency will evaluate it for effectiveness and continued need.

5. The date, time and place of at least one public hearing held in accordance with § ~~9-6-14:7.1~~ 2.2-4007 of the Code of Virginia to receive comments on the proposed regulation. The public hearing(s) may be held at any time during the public comment period and, whenever practicable, no less than 15 days prior to the close of the public comment period. The public hearing(s) may be held in such location(s) as the agency determine will best facilitate input from interested persons. In those cases where the agency elects to conduct a formal hearing, the notice shall indicate that the formal hearing will be held in accordance with § ~~9-6-14:8~~ 2.2-4009 of the Administrative Process Act.

I. The public comment period shall close no less than 60 days after publication of the ~~NOPC~~ *Notice of Public Comment Period* in The Virginia Register of Regulations.

J. The agency shall disseminate the ~~NOPC~~ *Notice of Public Comment Period* to the public via the following:

1. Distribution to the Registrar of Regulations for:—~~a.~~ publication in The Virginia Register of Regulations.

~~b.~~ ~~Publication in a newspaper of general circulation published at the state capital and such other newspapers as the agency may deem appropriate.~~

2. Distribution by mail or e-mail to persons on the list(s) or lists established under subsection A of this section.

K. *The agency shall make provision for receiving comments pertaining to the proposed regulation by regular mail, the Internet, or facsimile.* The agency shall prepare a summary of comments received in response to the ~~NOPC~~ *Notice of Public Comment Period* and the agency's response to the comments received. The agency shall send a draft of the summary of comments to all public commenters on the proposed chapter

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at least five days before final adoption of the regulation. The agency shall submit the summary and agency response and, if requested, submit the full comments to the approving authority. The summary, and the agency response, and the comments shall become a part of the agency file and after final action on the regulation by the approving authority, made available, upon request, to interested persons.

L. If the director as the approving authority determines that the process to adopt, amend or repeal any regulation should be terminated after approval of the draft proposed regulation, the director shall state in writing a rationale for the withdrawal of the proposed regulation.

M. Completion of the remaining steps in the adoption process shall be carried out in accordance with the Administrative Process Act.

4 VAC 5-10-40. Transition. (Repealed.)

~~A. All regulatory actions for which a NOIRA has been published in The Virginia Register of Regulations prior to June 29, 1994, shall be processed in accordance with the emergency amendments to 4 VAC 5-20-10 et seq., Regulatory Public Participation Guidelines.~~

~~B. This regulation shall supersede and repeal emergency amendments to 4 VAC 5-20-10 et seq., Regulatory Public Participation Procedures which became effective June 30, 1993. All regulatory actions for which a NOIRA has not been published in The Virginia Register of Regulations prior to June 29, 1994, shall be processed in accordance with this chapter.~~

VA.R. Doc. No. R03-301; Filed July 22, 2003, 4:43 p.m.

DEPARTMENT OF MINES, MINERALS AND ENERGY

Title of Regulation: 4 VAC 25-30. Minerals Other than Coal Surface Mining Regulations (REPEALING).

Title of Regulation: 4 VAC 25-31. Reclamation Regulations for Mineral Mining (adding 4 VAC 25-31-10 through 4 VAC 25-31-570).

Statutory Authority: §§ 45.1-161.3 and 45.1-180.3 of the Code of Virginia.

Effective Date: September 11, 2003.

Agency Contact: Conrad Spangler, Director, Mineral Mining, Department of Mines, Minerals and Energy, Fontaine Research Park, 900 Natural Resources Drive, P.O. Box 3727, Charlottesville, VA 22903, telephone (804) 951-6310, FAX (804) 951-6325 or e-mail cts@mme.state.va.us.

Summary:

This regulation is intended to ensure the most beneficial development of mineral resources and to minimize the effect of mining on the environment. The regulation addresses general requirements, permit standards, bonding, and general performance standards for surface mineral mining and enforcement. The amendments address industry changes and changes in technology, eliminate duplicative or nonessential requirements, clarify and strengthen current requirements and establish new requirements.

The proposed regulation is amended to address public comments, eliminate duplicative or nonessential requirements, and clarify and strengthen current requirements. The definition of "permitted area" is amended to clarify the use of "boundary" on the mine application map. The fees in the sections on permit fees and annual renewals are changed to reflect changes to the Code of Virginia. In the section on mineral mining plans, a change is made to address public comments concerning potential impacts to the hydrologic balance. The section regarding permit notifications is amended to remove redundant statements and the section related to overburden, refuse, spoil, and waste fills is amended to account for size, location, and the hazard potential of the fill material.

Summary of Public Comments and Agency's Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

<p>REGISTRAR'S NOTICE: The proposed regulation was adopted as published in 18:25 VA.R. 3406-3425 August 26, 2002, with the changes identified below. Pursuant to § 2.2-4031 of the Code of Virginia, the adopted regulation is not published at length; however, the sections that have changed since publication of the proposed are set out.</p>

CHAPTER 31.

RECLAMATION REGULATIONS FOR MINERAL MINING.

PART I.

GENERAL PROVISIONS.

4 VAC 25-31-10. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Acre-foot" means a unit of volume equal to 43,560 cubic feet or 325,853 gallons. One acre-foot of water is equivalent to one acre covered by water one foot deep.

"Berm" means a stable ridge of material used in reclamation for the control of sound and surface water, safety, aesthetics, or such other purpose as may be applicable.

"Critical areas" mean problem areas such as those with steep slopes, easily erodible material, hostile growing conditions, concentration of drainage or other situations where revegetation or stabilization will be potentially difficult.

"Department" means the Department of Mines, Minerals and Energy.

"Director" means the Director of the Department of Mines, Minerals and Energy or his designee.

"Division" means the Division of Mineral Mining.

"Fifty-year [flood storm]" means the [flood storm] magnitude expected to be equaled or exceeded on the average of once in 50 years. It may also be expressed as a probability that there is a 2.0% chance that the [flood storm] magnitude may be equaled or exceeded in any given year.

"Intermittent stream" means a stream or part of a stream that flows for at least one month of the calendar year as a result of ground water discharge or surface run-off.

"Internal service roads" mean roads that are to be used for internal movement of raw materials, soil, overburden, finished, or in-process materials within the permitted area, some of which may be temporary.

"Natural drainageway" means any natural or existing channel, stream bed, or watercourse that carries surface or ground water.

"One-hundred year [flood storm]" means the [flood storm] magnitude expected to be equaled or exceeded on the average of once in 100 years. It may also be expressed as a probability that there is a 1.0% chance that the [flood storm] magnitude may be equaled or exceeded in any given year.

"Perennial stream" means a stream or part of a stream that flows continuously during all of the calendar year as a result of ground water discharge or surface run-off.

"Permitted area" means the [disturbed land] area [~~and areas used for access roads and other activity in the area approved for mining~~] within the [defined] boundary shown on the application map [including all disturbed land area, and areas used for access roads and other mining-related activities].

"Principal access roads" mean roads that are well-defined roads leading from scales, sales offices, or loading points to a public road.

"Probable maximum flood (PMF)" means the flood that might be expected from the most severe combination of critical meteorologic and hydrologic conditions that are reasonably possible in the region. The PMF is derived from the current probable maximum precipitation available from the National Weather Service, National Oceanic and Atmospheric Association. In some cases local topography or meteorological conditions will cause changes from the generalized PMP values; therefore, it is advisable to contact local, state, or federal agencies to obtain the prevailing practice in specific cases.

["Qualified person" means a person who is suited by training or experience for a given purpose or task.]

"Regrade" or "grade" means to change the contour of any surface.

"Sediment" means undissolved organic or inorganic material transported or deposited by water.

"Sediment basin" means a basin created by the construction of a barrier, embankment, or dam across a drainageway or by excavation for the purpose of removing sediment from the water.

"Spillway design flood (SDF)" means the largest flood that needs be considered in the evaluation of the performance for a given project. The impounding structure shall perform so as to safely pass the appropriate SDF. Where a range of SDF is indicated, the magnitude that most closely relates to the involved risk should be selected.

"Stabilize" means any method used to prevent movement of soil, spoil piles, or areas of disturbed earth. This includes increasing bearing capacity, increasing shear strength, draining, compacting, rip-rapping, vegetating or other approved method.

"Ten-year storm" means the storm magnitude expected to be equaled or exceeded on the average of once in 10 years. It may also be expressed as a probability that there is a 10% chance that the storm magnitude may be equaled or exceeded in any given year. A 10-year 24-hour storm occurs when the total 10-year storm rainfall amount occurs in a 24-hour period.

"Top soil" means the surface layer and its underlying materials that have properties capable of producing and sustaining vegetation.

4 VAC 25-31-20. Scope.

This chapter establishes general and specific rules for mining permits, bonds, operations and reclamation [~~procedure~~ procedures], roads, revegetation, and other matters related to mineral mining.

4 VAC 25-31-30. Compliance.

The permittee shall comply fully with the requirements of Chapter 16 (§ 45.1-180 et seq.) of Title 45.1 of the Code of Virginia and this regulation and shall further ensure compliance by all employees, contractors, or other persons performing mining or reclamation activities.

4 VAC 25-31-40 through 4 VAC 25-31-90. [No change from proposed.]

4 VAC 25-31-100. Mineral mining permits.

Permits shall be renewed annually to continue to [~~be~~ remain] in effect.

4 VAC 25-31-110. [No change from proposed.]

4 VAC 25-31-120. Permit fee and bond.

A. The following permit fees shall be submitted upon receipt of a billing notice from the director and before the permit is issued:

1. A fee of [~~\$12~~ \$31] per acre for the total permitted acres shall be submitted for the initial permit application.
2. A fee of [~~\$6~~ \$16] per acre for the land permitted by the total operation shall be paid to transfer the permit when one operator succeeds another on an uncompleted operation.

B. All fees shall be in the form of cash, check, money order, or other form of payment acceptable to the director.

C. A bond is required as set forth in Part III of this regulation. Bonding shall be provided once the permit application is deemed complete.

4 VAC 25-31-130. Mineral mining plans.

Mineral mining plans shall be attached to the application and consist of the following:

1. The reclamation plan shall include a statement of the planned land use to which the disturbed land will be

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returned through reclamation, the proposed actions to assure suitable reclamation, and a time schedule for reclamation. The method of grading, removal of metal, lumber, and debris, including processing equipment, buildings, and other equipment relative to the mining operation and revegetation of the disturbed area shall be specified.

2. The operation plan shall include a description of the proposed method of mining and processing; the location of top soil storage areas; overburden, refuse and waste disposal areas; stockpiles, equipment storage, and maintenance areas; cut and fill slopes; and roadways. The operation plan shall also include all related design and construction data. The method of operation shall provide for the conducting of reclamation simultaneously where practicable with the mining operation. For the impoundments that meet the criteria of § 45.1-225.1 A of the Code of Virginia, plans shall be provided as required under 4 VAC 25-31-180 and 4 VAC 25-31-500.

3. The drainage plan shall consist of a description of the drainage system to be constructed before, during and after mining, a map or overlay showing the natural drainage system, and all sediment and drainage control structures to be installed along with all related design and construction data.

4. Adequate maps, plans and cross sections, and construction specifications shall be submitted to demonstrate compliance with the performance standards of Part IV (4 VAC 25-31-330 et seq.) of this chapter and Chapter 16 (§ 45.1-180 et seq.) of Title 45.1 of the Code of Virginia. Designs, unless otherwise specified, shall be prepared by a qualified person, using accepted engineering design standards and specifications.

5. A copy of the Virginia Department of Transportation [~~construction~~ land use] permit for roads that connect to public roads [~~shall be included where applicable~~].

6. If mining below the water table is to take place, the following conditions apply:

[a. The application shall contain an assessment of the potential for impact on the overall hydrologic balance from the proposed operations to be conducted within the permitted area.]

[~~a. b.~~] A plan for the minimization of adverse affects on water quality or quantity shall be [~~submitted and approved by the director~~ prepared based on the assessment in subdivision 6a of this section and included in the application].

[~~b. c.~~] In no case shall lakes or ponds be created if they are less than four feet deep, except when creation of wetlands is approved as part of the post-mining land use.

4 VAC 25-31-140. Marking of permit boundaries.

A. The permit boundary of the mine shall be clearly marked with identifiable markings when mine related land disturbing activities are within 100 feet of the permit boundary.

B. This [~~regulation~~ section] is not applicable to lands disturbed prior to the effective date of this regulation.

C. Maintenance of permit boundary markers is not required after completion of construction, completion of final disturbances, or completion of final reclamation unless the area is being redisturbed by mining.

D. Separate boundary markings are not required if clear, readily identifiable features, such as streams, permanent roads, or permanent power lines coincide with the permit boundary.

4 VAC 25-31-150. Maps.

A. Maps shall be supplied as described in §§ 45.1-181 and 45.1-182.1 of the Code of Virginia and in this chapter that show the total area to be permitted and the area to be affected in the next ensuing year (with acreage calculated).

B. Preparation of maps.

1. All application, renewal, and completion maps shall be prepared and certified under the direction of a professional engineer, licensed land surveyor, licensed geologist, issued by a standard mapping service, or prepared in such a manner as to be acceptable to the director.

2. If maps are not prepared by the applicant, the certification of the maps shall read as follows: "I, the undersigned, hereby certify that this map is correct and shows to the best of my knowledge and belief, all the information required by the mineral mining laws and regulations of the DMME."

3. The applicant shall submit a general location map showing the location of the mine, such as a county highway map or equivalent, in the initial application.

4. Sensitive features within 1,000 feet of the permit boundary such as cemeteries, oil and gas wells, underground mine workings, streams, creeks and other bodies of public water, public utilities and utility lines, public buildings, public roads, churches, and occupied dwellings shall be shown.

C. Map code and legend.

1. A color code as prescribed by the director shall be used in preparing the map.

2. Graphic symbols may be used to represent the different areas instead of a color-coded map.

3. The map shall include a legend that shows the graphic symbol or color code and the acreage for each of the different areas.

4 VAC 25-31-160. Legal right.

A. A statement of the source of the legal right of the applicant to enter and conduct operations on the land proposed to be covered by the permit as noted in § 45.1-181 of the Code of Virginia shall be submitted to the division. In addition, the applicant shall submit proof of right of entry, which shall consist of a copy of the lease or deed, or names of parties to the lease or deed, date of execution, and recording information.

B. On the permit application [,] the applicant shall disclose [~~all past mineral surface~~ any type of] mining [~~permits permit~~], revocations, [security deposited in lieu of bond that has been revoked or forfeited,] and bond forfeitures in Virginia or any other state with which he or any individual, corporation, [trust,] partnership, association, or other legal entity with which he has or has had control or common control.

4 VAC 25-31-170. Permit notifications.

A. The following shall be made with a new permit application:

1. Notification to property owners within 1,000 feet of the permit boundary by certified mail. A record shall be kept of:

- a. The names and addresses of those notified, and
- b. The certified mail return receipts used for the notification.

2. A statement as required by § 45.1-184.1 of the Code of Virginia to property owners that requires land owners within 1,000 feet of the permit boundary to be notified that the operator is seeking a surface mining and reclamation permit from the Department of Mines, Minerals and Energy. The statement shall also include:

- a. Company name;
 - b. Date;
 - c. Location;
 - d. Distance and direction of nearest town or other easily identified landmark;
 - e. City or county;
 - f. Tax map identification number; and
 - g. Requirements for (i) regrading; (ii) revegetation; and (iii) erosion controls of mineral mine sites.
- [h. A notice that informs property owners that they have 10 days from receipt of the permit notification to specify written objections or request a hearing. This request shall be in writing and shall be sent to the Department of Mines, Minerals and Energy, Division of Mineral Mining, P.O. Box 3727, Charlottesville, Virginia 22903, (434) 951-6310.]

[~~B. A statement that property owners within 1,000 feet of the permit boundary have 10 days from receipt of the permit notification to specify written objections or request a hearing. This request shall be in writing and shall be sent to the Department of Mines, Minerals and Energy, Division of Mineral Mining, P.O. Box 3727, Charlottesville, Virginia 22903.~~]

[~~C. B.] A statement, with certified mail receipt, certifying that the chief administrative official of the local political subdivision has been notified.~~

[~~D. C.] Notification to any utilities on or within 500 feet of the permitted area. The notification shall consist of the following:~~

- 1. The name of the party issuing the notice;
- 2. The applicant name, address, and phone number; and

3. The name and address of the party receiving the notice and the information noted in subdivision A 2 of this section.

[~~E. Property owners within 1,000 feet of the permit boundary have 10 days from receipt of the notification of proposed mining to file objections with the director. D.] No permit will be issued until at least 15 days after receipt of the application by the division. If all persons required to receive notice have issued a statement of no objection, the permit may be issued in less than 15 days.~~

[~~F. E.] Copies of all permit notifications and statements required in subsections A through [~~D C~~] of this section shall be supplied to the department with the application.~~

4 VAC 25-31-180. Impoundments.

The design data and construction plans and specifications for impoundments meeting the criteria set forth in Chapter 18.1 (§ 45.1-225.1 et seq.) of Title 45.1 of the Code of Virginia shall be submitted to the director prior to initiation of construction activities. Such a plan shall be certified as prepared by, or under the supervision of, a registered professional engineer and shall include:

- 1. Design and construction specifications;
- 2. Examination and monitoring;
- 3. Emergency procedures; and
- 4. Closure and abandonment plans.

4 VAC 25-31-190. Availability of permits.

Mineral mining permits and a copy of the permit application shall be kept on-site while mining is underway.

4 VAC 25-31-200. Exemption for restricted mining.

Any operator engaging in mining and disturbing less than a total of one acre of land and removing less than [a total of] 500 tons of minerals [~~total~~ ,] is exempt from all mining permit fees, renewal fees and bonding requirements in this chapter. The mining operator shall submit an application for a permit, a sketch of the mining site, and an operations plan, which shall be adhered to in accordance with §§ 45.1-181 and 45.1-182.1 of the Code of Virginia.

Article 2.

Permit Renewal and Surety Adjustments.

4 VAC 25-31-210. Annual renewal.

A. If a permitted mineral mine operator wishes to continue operations, the mineral mining permit shall be renewed each year within 10 days of the anniversary date. If the time requirements set forth herein are not met, the permit shall expire 10 days following the anniversary date.

B. A renewal fee in the amount of [~~\$6-~~ \$16] per acre for previous acres disturbed plus estimated additional acres to be disturbed in the next 12 months shall accompany the permit renewal submitted to the director.

C. The permit renewal shall be submitted on a form prescribed by the director. The renewal shall be signed by the applicant or his legal representative. The permit renewal and maps

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must be received by the anniversary date and meet the requirements in 4 VAC 25-31-100 through 4 VAC 25-31-220.

D. If in a given year there are no [~~substantive~~] changes to the map required in 4 VAC 25-31-150, the operator may submit a certification instead of the map for the year. The certification shall read as follows: "I, the undersigned, hereby certify that no changes have been made in the different areas or in other map features since the last annual permit renewal or modification."

E. If at renewal time, bond or other surety is less than the required coverage, the director will notify the operator in writing of the amount required. The operator shall submit the required bond according to the requirements in 4 VAC 25-31-220 through 4 VAC 25-31-270 before the area is disturbed.

PART III. BONDING.

4 VAC 25-31-220 through 4 VAC 25-31-290. [No change from proposed.]

4 VAC 25-31-300. Inspections for adequacy of vegetation and bond release.

A. Final inspection for bond release shall be made no sooner than two growing seasons after the last seeding.

B. Final inspection for bond release shall require:

1. No noncritical areas larger than one-half acre shall be allowed to exist with less than 75% ground cover. Vegetation shall exhibit growth characteristics for long-term survival.

2. Seeded portions of critical areas shall have adequate vegetative cover so the area is completely stabilized.

3. Bond release inspections for industrial, residential, or commercial post-mining use shall ensure that:

a. All areas not redisturbed by implementation of the post-mining use are reclaimed and satisfactorily stabilized.

b. All areas associated with construction of buildings or residential dwellings for post-mining use are covered by appropriate plans approved by the local governing body, i.e., erosion and sediment control plans, building permits, and development plans.

c. All areas not covered by such approved local government plans shall be reclaimed and stabilized in accordance with subdivisions 1 and 2 of this subsection prior to release of bond.

4. Bond release inspections for other post-mining uses will ensure that all areas not directly used by the post-mining use are stabilized in accordance with subdivisions 1 and 2 of this subsection and that the post-mining use is implemented.

4 VAC 25-31-310. [No change from proposed.]

4 VAC 25-31-320. Minerals Reclamation Fund (MRF).

A. Each operator who has had five years of satisfactory operation in the Commonwealth under Chapter 16 (§ 45.1-180 et seq.) of Title 45.1 of the Code of Virginia shall become a

member of the fund by making an initial payment to the fund of \$50 for each acre currently disturbed and each acre estimated to be affected by mining operations during the next year. Thereafter the member shall make an annual payment of \$12.50 for each acre currently disturbed plus each acre estimated to be affected during the next ensuing year. No annual Minerals Reclamation Fund deposits will be collected from members where the permit Minerals Reclamation Fund deposits divided by the number of bonded acres in the next ensuing year is equal to or greater than \$500.

B. Entry into the Minerals Reclamation Fund shall be mandatory for all eligible permittees.

C. Operator deposits into the Minerals Reclamation Fund shall be released or retained under the following conditions:

1. When the operation and reclamation are complete and the reclaimed area is suitable for bond release [,] Minerals Reclamation Fund deposits for the reclaimed area shall be returned to the operator.

2. When the mining permit is transferred to another permittee and division approval is granted, Minerals Reclamation Fund deposits for the permit may be returned to the transferring permittee.

3. When a mining permit is completely relinquished to another operator, other than in a permit transfer, all of the Minerals Reclamation Fund deposits for the permit shall be returned to the relinquishing operator upon division approval of the relinquishment.

4. After bond release applications are approved by the division, Minerals Reclamation Fund deposits for the permit shall be held or retained according to the following formulas:

a. If the permit Minerals Reclamation Fund balance divided by the number of acres remaining under bond is equal to or greater than \$500, Minerals Reclamation Fund deposits for the permit will be released so that the remaining deposits equal \$500 per acre for the acres remaining under bond.

Example: 50 acres permitted; 10 acres bonded; 2 acres requested for release; Minerals Reclamation Fund deposits = \$4,000;

Minerals Reclamation Fund balance , remaining bonded acres = \$500;

\$4,000 , (10-2) acres = \$500.

b. If the permit Minerals Reclamation Fund balance divided by the number of acres remaining under bond is less than \$500 [,] the bond release amount will be determined by dividing the permit Minerals Reclamation Fund deposit by the number of bonded acres including the acres to be released and then multiplying by the number of acres to be released.

Example: 50 acres permitted; 10 acres bonded; 2 acres requested for release; Minerals Reclamation Fund deposits = \$3,000;

Minerals Reclamation Fund balance , total bonded acres
= Release amount \$ per acre;

\$3,000 , 10 acres = \$300 per acre;

Release amount = \$300 per acre x 2 acres = \$600.

D. Moneys available in the Minerals Reclamation Fund may be less than the total of all operator deposits due to expenditures for bond forfeiture as required by § 45.1-197.12 of the Code of Virginia. Minerals Reclamation Fund refunds are subject to availability of moneys in the Minerals Reclamation Fund and shall be suspended if the fund decreases below \$250,000. Payments to the fund are then proportionately assessed until the fund returns to a minimum, \$250,000 or bond or other securities are posted as required by the director in accordance with § 45.1-197.14 of the Code of Virginia.

E. Minerals Reclamation Fund deposits will be transferred to the successor operator when a permit transfer occurs due to a change in organization status or restructuring that does not involve a complete change of ownership.

PART IV.
PERFORMANCE STANDARDS.

4 VAC 25-31-330. [No change from proposed.]

4 VAC 25-31-340. [No change from proposed.]

4 VAC 25-31-350. Roads.

A. Internal service roads and principal access roads shall be planned to minimize the impact of traffic, dust, and vehicle noise on developed areas outside the mining site.

B. Construction standards.

1. The integrity of drainageways shall be maintained. If natural drainageways are altered or relocated during construction, adjoining landowners shall be protected from damage resulting from construction.

2. Drainage structures shall be required in order to cross a stream channel. Such structures shall be constructed with consideration for surrounding drainage acreage and culvert size, and slope so as not to restrict the flow of the stream, i.e., the bridge or culverts shall be of adequate size to permit stream flow throughout the seasonal periods during the life of the [surface] mine permit. Temporary stream crossings for pioneer roads shall be for infrequent use, stable, only used in low flow times, and shall not contribute to sedimentation off-site.

3. Roads shall be located away from streams wherever possible.

4. Road surfaces and ditches shall be stabilized. Side slopes shall be constructed in a stable manner to minimize erosion and sedimentation.

5. Ditches shall be constructed where necessary, with consideration for surrounding drainage acreage and slope and shall have sufficient capacity to control surface run-off.

6. Culverts shall be installed in accordance with the following standards:

a. Relief culverts shall be installed at intervals to prevent overloading of ditches.

b. Culverts shall be placed on a minimum grade to ensure free drainage and be covered by compacted fill as specified by the manufacturer.

c. The inlet end shall be protected by a headwall of a suitable material such as a concrete retaining wall, sand bags, rock riprap, or other approved material.

d. The outlet end shall discharge onto an apron of rock riprap or other approved material. Where practical, the outlet end shall be placed below the toe of the fill. At no time should run-off be allowed to flow over an unprotected fill slope.

e. All culverts shall have the capacity to carry storm run-off and shall be properly maintained.

7. Sediment control shall be provided for roads to minimize sediment that leaves the disturbed area.

8. Dust from roads shall be adequately controlled.

9. Roads shall be surfaced and maintained to prevent the depositing of mud and debris on public roads.

10. Roads shall not be surfaced with any acid producing material or any material that will introduce a high concentration of suspended solids into surface drainage.

C. Maintenance is required to ensure the proper functioning of the road and drainage system. Maintenance of the road system shall consist of inspecting, repairing and cleaning of roadways, ditches, and culverts as necessary. Particular attention shall be given to removing debris from culvert inlets.

D. When a road is abandoned, steps shall be taken to minimize erosion and establish the post-mining use in accordance with the reclamation plan.

4 VAC 25-31-360 through 4 VAC 25-31-390. [No change from proposed.]

4 VAC 25-31-400. Overburden, refuse, spoil and waste fills.

A. Overburden, refuse, spoil and waste disposal fills with the capability to impound water, sediment or slurred tailings, slimes or refuse in a liquid, or semi-liquid state, shall be designed and constructed in accordance with 4 VAC 25-31-500.

B. Overburden, refuse, spoil and waste disposal fills that do not have the capability to impound water or other liquid or semi-liquid materials, shall meet the requirements of this section.

C. Fills that are not impoundments shall be designed to meet the requirements of this section and use current, prudent engineering practices.

D. The plans and specifications for fills shall consist of [a detailed an] engineering design report that includes engineering calculations, drawings, and specifications [,with the following as a minimum . These shall take into account the

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size, location, and hazard potential of the fill and will include the following as necessary]:

1. A site plan showing the location of the structure, associated access, surface and subsurface drainage systems, sediment control structures, and the proposed fill configuration.
2. Cross sections and profiles showing the original ground, proposed fill profile, location of terraces and constructed slopes.
3. Design details for all surface and subsurface drainage control structures.
4. A narrative description of site preparation, foundation evaluation and preparation, materials placement, material handling, and sequencing of construction.
5. A closure and final reclamation plan for the fill and associated structures.

E. Fills shall be constructed, operated, and maintained such that they perform in accordance with their design and purpose throughout the life of the fill.

F. Fills shall be constructed with slopes no steeper than two horizontal to one vertical for predominantly clay soils and no steeper than three horizontal to one vertical for predominantly sandy soils or must exhibit a static safety factor of 1.5 for other steeper slopes.

G. Fills shall be constructed, maintained and inspected to ensure protection of adjacent properties, preservation of public safety, and to provide prompt notice of any potentially hazardous or emergency situation.

H. Fills shall be closed and abandoned in a manner that ensures continued stability and compatibility with the post-mining land use.

4 VAC 25-31-410. [No change from proposed.]

4 VAC 25-31-420. Screening.

A. Screening shall be provided [for sound absorption and] to improve the appearance of the mining site from public roads, public buildings, recreation areas, and occupied dwellings.

B. If screening is to be undisturbed forest, a distance of 100 feet must be left undisturbed within the permit boundary. [Less than 100 feet may be approved if the natural vegetation provides the needed screening benefits between the mining operation and the adjacent property.] Planted earth berms, natural topography, appropriately designed fences or walls may be used if approved in the mineral mining plan.

C. On permanent berms for screening, the spoils (waste materials) shall be initially placed on the proposed berm area and top soil (where available) shall be spread over the spoil areas, not less than four inches in thickness, and if possible, 12 inches in thickness. The remaining top soil shall be placed in a designated area for future spreading on other areas which need top dressing. The top soil shall be seeded or planted in accordance with the approved reclamation plan.

4 VAC 25-31-430 through 4 VAC 25-31-490. [No change from proposed.]

4 VAC 25-31-500. Water impoundments.

A. Structures that impound water or sediment to a height of five feet or more above the lowest natural ground area within the impoundment and have a storage volume of 50 acre-feet or more, or impound water or sediment to a height of 20 feet or more regardless of storage volume, shall meet the following criteria (noted in Chapter [~~48~~ 18.1 (§ 45.1-225.1 et seq.)] of Title 45.1 of the Code of Virginia):

1. Impoundments meeting or exceeding the size criteria set forth in this section shall be designed utilizing a spillway flood and hazard potential classification as specified in the following table:

Class of Impoundment*	Hazard Potential if Failure Occurred	Size Classification **		Spillway Design Flood (SDF)***
		Capacity (ac-ft)	Height	
I	Probable loss of life Extensive off-site effect	A) >1000	> 40 ft	PMF [≥ 0.5] PMF-PMF [≥ 0.5] PMF-PMF 100 yr - [≥ 0.5] PMF
		B) > 500	< 40 ft	
		C) > 50	> 5 ft	
		D) < 50	> 20 ft	
II	Probable loss of life Appreciable off-site effects	A) >1000	> 40 ft	[≥ 0.5] PMF-PMF 100 yr - [≥ 0.5] PMF 100 yr - [≥ 0.5] PMF 100 yr
		B) > 500	< 40 ft	
		C) > 50	> 5 ft	
		D) < 50	> 20 ft	
III	No loss of life Minimal off-site effect	A) >1000	> 40 ft	100 yr - [≥ 0.5] PMF 100 yr 100 yr 50 yr - 100 yr
		B) > 500	< 40 ft	
		C) > 50	> 5 ft	
		D) < 50	< 20 ft	

*Size and hazard potential classifications shall be proposed and justified by the operator and shall be subject to approval by the director. Present and projected development in the inundation zone downstream from the structure shall be used in determining the classification.

**The factor determining the largest size classification shall govern.

*** The establishment of rigid design flood criteria or standards is not intended. Safety must be evaluated in the light of peculiarities and local conditions for each impounding structure and in recognition of the many factors involved, some of which may not be precisely known. Such can only be done by competent, experienced engineering judgment, which the values in the table are intended to add to, not replace.

2. Impounding structures shall be constructed, operated, and maintained such that they perform in accordance with their design and purpose throughout their life.

a. Impoundments shall be designed and constructed by or under the direction of a qualified registered professional engineer experienced in the design and construction of impoundments.

b. The designs shall meet the requirements of this section and use current prudent engineering practices.

c. The plans and specifications for an impoundment shall consist of a detailed engineering design report that includes engineering drawings and specifications, with the following as a minimum:

(1) The name of the mine; the name of the owner; classification of the impounding structure as set forth in this regulation; designated access to the impoundment and the location with respect to highways, roads, streams and existing impounding structures and impoundments that would affect or be affected by the proposed impounding structure.

(2) Cross sections, profiles, logs of test borings, laboratory and in situ test data, drawings of principal and emergency spillways and other additional drawings in sufficient detail to indicate clearly the extent and complexity of the work to be performed.

(3) The technical provisions as may be required to describe the methods of the construction and construction quality control for the project.

(4) Special provisions as may be required to describe technical provisions needed to ensure that the impounding structure is constructed according to the approved plans and specifications.

d. Components of the impounding structure, the impoundment, the outlet works, drain system and appurtenances shall be durable in keeping with the design and planned life of the impounding structure.

e. All new impounding structures regardless of their hazard potential classification, shall include a device to permit draining of the impoundment within a reasonable period of time as determined by the owner's professional engineer, subject to approval by the director.

f. Impoundments meeting the size requirements and hazard potential of Class I, Class II and Class III shall have a minimum static safety factor of 1.5 for a normal pool with steady seepage saturation conditions and a seismic safety factor of 1.2.

g. Impoundments shall be inspected and maintained to ensure that all structures function to design specifications.

h. Impoundments shall be constructed, maintained and inspected to ensure protection of adjacent properties and preservation of public safety and shall meet proper design and engineering standards under Chapter 18.1 (§ 45.1-225.1 et seq.) of Title 45.1 of the Code of Virginia. Impoundments shall be inspected at least daily by a qualified person, designated by the licensed operator, who can provide prompt notice of any potentially hazardous or emergency situation as required under § 45.1-225.2 of the Code of Virginia. Records of the

inspections shall be kept and certified by the operator or his agent.

3. Impoundments shall be closed and abandoned in a manner that ensures continued stability and compatibility with the post-mining land use.

4. The following are acceptable as design procedures and references:

a. The design procedures, manuals and criteria used by the United States Army Corps of Engineers:

b. The design procedures, manuals and criteria used by the United States Department of Agriculture, Natural Resources Conservation Service:

c. The design procedures, manuals and criteria used by the United States Department of Interior, Bureau of Reclamation:

d. The design procedures, manuals and criteria used by the United States Department of Commerce, National Weather Service: or

e. Other design procedures, manuals and criteria that are accepted as current, sound engineering practices, as approved by the director prior to the design of the impounding structure.

B. Impoundments that do not meet or exceed the size criteria of subsection A of this section shall meet the following criteria:

1. Be designed and constructed using current, prudent engineering practice to safely perform the intended function.

2. Be constructed with slopes no steeper than two-horizontal-to-one-vertical in predominantly clay soils or three-horizontal-to-one-vertical in predominantly sandy soils.

3. Safely pass the runoff from a 50-year storm event for temporary (life of mine) structures and a 100-year storm event for permanent (to remain after mining is completed) structures.

4. Be closed and abandoned to ensure continued stability and compatibility with the post-mining use.

5. Be inspected and maintained to ensure proper functioning.

6. Provide adequate protection for adjacent property owners and ensure public safety.

C. Impoundments with impounding capability created solely by excavation shall comply with the following criteria:

1. Be designed and constructed using prudent engineering practice to safely perform the intended function.

2. Be constructed with slopes no steeper than two-horizontal-to-one-vertical in predominantly clay soils or three-horizontal-to-one-vertical in predominantly sandy soils.

3. Be designed and constructed with outlet facilities capable of:

a. Protecting public safety;

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- b. Maintaining water levels to meet the intended use; and
- c. Being compatible with regional hydrologic practices.

4. Be closed and abandoned to ensure continued stability and compatibility with the post-mining use.

5. Be inspected and maintained to ensure proper functioning.

6. Provide adequate protection for adjacent property owners and ensure public safety.

4 VAC 25-31-510. [No change from proposed.]

4 VAC 25-31-520. Revegetation.

Disturbed land shall be stabilized as quickly as possible after it has been disturbed with a permanent protective vegetative cover. The Mineral [Mining Mine] Operator's Manual provides guidance in the revegetation of surface mined areas. Exposed areas subject to erosion on an active mining site shall be protected by a vegetative cover or by other approved methods. Simultaneous revegetation shall be incorporated into the mineral mining plan. Reclamation shall be completed on areas where mining has ceased.

4 VAC 25-31-530. [No change from proposed.]

4 VAC 25-31-540 through 4 VAC 25-31-570. [No change from proposed.]

NOTICE: The forms used in administering 4 VAC 25-31, Reclamation Regulations for Mineral Mining, are not being published due to the large number; however, the name of each form is listed below. The forms are available for public inspection at the Department of Mines, Minerals and Energy, Fontaine Research Park, 900 Natural Resources Drive, Charlottesville, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS

Permit License Application, DMM-101 (rev. 9/99).

Notice of Application to Mine, DMM-103 (rev. 9/99).

Statement Listing the Names and Addresses of Adjoining Property Owners, DMM-103a (rev. 9/99) [; included in DMM-103 Notice of Application to Mine].

Yearly Progress Report, DMM-105 (rev. 12/94).

Surety Bond, DMM-107 (rev. 9/99).

Legend, DMM-109 (rev. 9/99).

Relinquishment of Mining Permit, DMM-112 (rev. 9/99).

Request for Amendment, DMM-113 (rev. 7/99).

Consolidated Biennial Report of Waivered Counties, Cities, and Towns, DMM-116 (rev. [12/99 ~~2002~~]).

Biennial Waivered Counties, Cities, and Towns, Report of Individual Mining Companies, DMM-117 (rev. 12/99).

Consent for Right of Entry, DMM-120 (rev. 12/99).

License Renewal Application, DMM-157 (rev. 9/99).

Permit Transfer Acceptance, DMM-161 (rev. 9/99).

[*Notarized Statement - Maps/Map Legends Unchanged DMM-164 (rev. 10/02).*]

VA.R. Doc. No. R01-167 and R01-165; Filed July 22, 2003, 2:21 p.m.

VIRGINIA SOIL AND WATER CONSERVATION BOARD

REGISTRAR'S NOTICE: The following regulatory action is exempt from the Administrative Process Act in accordance with (i) § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved, and (ii) § 2.2-4006 A 3 of the Code of Virginia, which excludes regulations that consist only of changes in style or form or corrections of technical errors. The Virginia Soil and Water Conservation Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 4 VAC 50-10. Regulatory Public Participation Procedures (amending 4 VAC 50-10-10, 4 VAC 50-10-20, and 4 VAC 50-10-30; repealing 4 VAC 50-10-40).

Statutory Authority: §§ 2.2-4007 and 10.1-502 of the Code of Virginia.

Effective Date: September 10, 2003

Summary:

The amendments update references to statutory law in the regulations to conform to changes in the Code of Virginia, clarify steps a petitioner must take to perfect a petition for rulemaking, clarify agency responsibilities, and provide for publication of petitions in the Virginia Register of Regulations. Other amendments correct technical errors and reflect changes in department internal practices and procedures, and changes in style or form.

Agency Contact: Leon E. App, Acting Deputy Director, Department of Conservation and Recreation, 203 Governor Street, Suite 302, Richmond, VA 23219, telephone (804) 786-6124, FAX (804) 786-6141 or e-mail leonapp@dcr.state.va.us.

4 VAC 50-10-10. Definitions.

A. The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

"Administrative Process Act" means Chapter 4-4:4 40 (§ ~~9-6-44~~ 2.2-4000 et seq.) of Title 9 2.2 of the Code of Virginia.

"Agency" means the Department of Conservation and Recreation, including staff, established pursuant to Virginia law that implements programs and provides administrative support to the approving authority.

"Approving authority" means the Virginia Soil and Water Conservation Board, the collegial body (board), established pursuant to Virginia law as the legal authority to adopt regulations.

"Director" means the Director of the Department of Conservation and Recreation or his designee.

"Formal hearing" means agency processes other than those informational or factual inquiries of an informal nature provided in § ~~9-6.14:7-4~~ 2.2-4007 of the Administrative Process Act and includes *the* only opportunity for private parties to submit factual proofs in evidential hearings as provided in § ~~9-6.14:8~~ 2.2-4009 of the Administrative Process Act.

"Locality particularly affected" means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

"Participatory approach" means a method for the use of (i) standing advisory committees, (ii) ad hoc advisory groups or panels, (iii) consultation with groups or individuals registering interest in working with the agency, or (iv) any combination thereof in the formation and development of regulations for agency consideration. When an ad hoc advisory group is formed, the group shall include representatives of the regulated community and the general public. The decisions as to the membership of the group shall be at the discretion of the director.

"Person" means an individual, a corporation, a partnership, an association, a governmental body, a municipal corporation, or any other legal entity.

"Public hearing" means an informal proceeding, held in conjunction with the Notice of Public Comment *Period* and similar to that provided for in § ~~9-6.14:7-4~~ 2.2-4007 of the Administrative Process Act, to afford persons an opportunity to submit views and data relative to regulations on which a decision of the approving authority is pending.

"Public meeting" means an informal proceeding conducted by the agency in conjunction with the Notice of Intended Regulatory Action to afford persons an opportunity to submit comments relative to intended regulatory actions.

"Virginia law" means the provisions found in the Virginia statutory law authorizing the approving authority, director, or agency to make regulations or containing procedural requirements thereof.

B. Unless specifically defined in Virginia law or in this chapter, terms used shall have the meanings commonly ascribed to them.

4 VAC 50-10-20. General.

A. The procedures in 4 VAC 50-10-30 ~~of this chapter~~ shall be used for soliciting the input of interested persons in the initial formation and development, amendment or repeal of ~~chapters regulations~~ in accordance with the Administrative Process Act, applicable Governor's Executive Orders, the Virginia Register Act, and the Regulations of the Virginia Code Commission for Implementing the Virginia Register Act. This chapter does not apply to ~~chapters regulations~~ exempted from the provisions of the Administrative Process Act § ~~9-6.14:1 A and B~~ 2.2-4002 or excluded from the operation of Article 2 of the Administrative Process Act § ~~9-6.14:4.1 C~~ 2.2-4006.

B. The failure of any person to receive any notice or copies of any documents provided under these guidelines shall not affect the validity of any ~~chapter regulation~~.

C. Any person may petition the approving authority for the adoption, amendment or repeal of a ~~chapter regulation~~. The petition, at a minimum, shall contain the following information:

1. Name of petitioner;
2. Petitioner's mailing address and telephone number;
3. Petitioner's interest in the proposed action;
4. ~~Recommended chapter or addition, deletion or amendment to Recommendations for language to be added to or deleted from a specific chapter regulation or chapters regulations;~~
5. Statement of need and justification for the proposed action;
6. Statement of impact on the petitioner and other affected persons; and
7. Supporting documents, as applicable.

~~The approving authority shall provide a written response to such petition within 180 days from the date the petition was received.~~ At the discretion of the approving authority or the director, the procedures in 4 VAC 50-10-30 may be supplemented to provide additional public participation in the ~~chapter regulation~~ adoption process or as necessary to meet federal requirements.

4 VAC 50-10-30. Public participation procedures.

A. The agency shall establish and maintain a list or lists consisting of persons expressing an interest in the adoption, amendment or repeal of ~~chapters regulations~~. Any person wishing to be placed on any list may do so by *electronic notification or by* writing the agency. In addition, the agency, at its discretion, may add to any list any person, organization or publication it believes will be interested in participating in the promulgation of ~~chapters regulations~~. Individuals and organizations may be periodically requested to indicate their desire to continue to receive documents or be deleted from a list. *It will be up to the interested parties to notify the department if there is a change in their contact information.* Individuals and organizations may be deleted from any list at the request of the individual or organization, or at the discretion of the agency when mail is returned as undeliverable. *Parties may also contact the Commonwealth's Regulatory Town Hall website to receive electronic notices of regulatory actions.*

B. Whenever the approving authority so directs or upon the director's initiative, the agency may commence the ~~chapter regulation~~ adoption process and proceed to draft a proposal according to these procedures.

C. The director shall use the participatory approach to assist in the development of the proposal or use one of the following alternatives:

1. Proceed without using the participatory approach if the approving authority specifically authorizes the director to proceed without using the participatory approach.

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2. Include in the Notice of Intended Regulatory Action (NOIRA) a statement inviting comment on whether the director should use the participatory approach to assist the agency in the development of the proposal. If the director receives written responses from at least five persons during the associated comment period indicating that the director should use the participatory approach, the director will use the participatory approach requested. Should different approaches be requested, the director shall determine the specific approach to be utilized.

D. The agency shall issue a NOIRA whenever it considers the adoption, amendment or repeal of any ~~chapter~~ regulation.

1. The NOIRA shall include, at least, the following:

- a. A description of the subject matter of the planned ~~chapter~~ regulation.
- b. A description of the intent of the planned ~~chapter~~ regulation.
- c. A brief statement as to the need for regulatory action.
- d. A brief description of alternatives available, if any, to meet the need.
- e. A request for comments on the intended regulatory action, to include any ideas to assist the agency in the development of any proposal.
- f. A request for comments on the costs and benefits of the stated alternatives or other alternatives.
- g. A statement of the director's intent to hold at least one public hearing on the proposed ~~chapter~~ regulation after it is published in The Virginia Register of Regulations.
- h. A statement inviting comment on whether the director should use the participatory approach to assist the agency in the development of any proposal. Including this statement shall only be required when the director makes a decision to pursue the alternative provided in subdivision C 2 of this section.

2. The agency shall hold at least one public meeting whenever it considers the adoption, amendment or repeal of any ~~chapter~~ regulation unless the approving authority specifically authorizes the director to proceed without holding a public meeting.

In those cases where a public meeting(or meetings will be held, the NOIRA shall also include the date, not to be less than 30 days after publication in The Virginia Register of Regulations, time and place of the public meeting or meetings.

3. The public comment period for NOIRAs under this section shall be no less than 30 days after publication in The Virginia Register of Regulations.

E. The agency shall disseminate the NOIRA to the public via the following:

1. Distribution to the Registrar of Regulations for publication in The Virginia Register of Regulations.

2. *Distribution through posting the document on the Commonwealth's Regulatory Town Hall website.*

~~2-~~ 3. Distribution of the NOIRA, or notification of how to obtain a copy of the document electronically, by mail or e-mail to persons on the list or lists, established under subsection A of this section.

F. *The agency shall make provision for receiving comments pertaining to the NOIRA by regular mail, the Internet, or facsimile.* After consideration of public input, the agency may complete the draft proposed ~~chapter~~ regulation and any supporting documentation required for review. If the participatory approach is being used, the draft ~~chapter~~ regulation shall be developed in consultation with the participants. A summary or copies of the comments received in response to the NOIRA shall be distributed to the participants during the development of the draft ~~chapter~~ regulation. This summary or copies of the comments received in response to the NOIRA shall also be distributed to the approving authority.

G. Upon approval of the draft proposed ~~chapter~~ regulation by the approving authority, the agency shall publish a Notice of Public Comment (~~NOPC~~) Period and the proposal for public comment.

H. The ~~NOPC~~ Notice of Public Comment Period shall include, at least, the following:

1. The notice of the opportunity to comment on the proposed ~~chapter~~ regulation, location of where copies of the draft may be obtained and name, address and telephone number of the individual to contact for further information about the proposed ~~chapter~~ regulation.

2. A request for comments on the costs and benefits of the proposal.

3. The identity of any locality particularly affected by the proposed ~~chapter~~ regulation

4. A statement that an analysis of the following has been conducted by the agency and is available to the public upon request:

a. A statement of purpose: the rationale or justification for the new provisions of the ~~chapter~~ regulation, from the standpoint of the public's health, safety or welfare.

b. A statement of estimated impact:

(1) Projected number and types of regulated entities or persons affected.

(2) Projected cost, expressed as a dollar figure or range, to regulated entities (and to the public, if applicable) for implementation and compliance. In those instances where the agency is unable to quantify projected costs, it shall offer qualitative data, if possible, to help define the impact of the ~~chapter~~ regulation. Such qualitative data shall include, if possible, an example or examples of the impact of the proposed ~~chapter~~ regulation on a typical member or members of the regulated community.

(3) Projected cost to the agency for implementation and enforcement.

(4) The beneficial impact the ~~chapter~~ regulation is designed to produce.

c. An explanation of need for the proposed ~~chapter~~ regulation and potential consequences that may result in the absence of the ~~chapter~~ regulation.

d. An estimate of the impact of the proposed ~~chapter~~ regulation upon small businesses as defined in § ~~9-199~~ 2.2-2279 B of the Code of Virginia or organizations in Virginia.

e. A description of provisions of the proposed ~~chapter~~ regulation which are more restrictive than applicable federal requirements, together with the reason why the more restrictive provisions are needed.

f. A discussion of alternative approaches that were considered to meet the need the proposed ~~chapter~~ regulation addresses, and a statement as to whether the agency believes that the proposed ~~chapter~~ regulation is the least burdensome alternative to the regulated community that fully meets the stated purpose of the proposed ~~chapter~~ regulation.

g. A schedule setting forth when, after the effective date of the ~~chapter~~ regulation, the agency will evaluate it for effectiveness and continued need.

5. The date, time and place of at least one public hearing held in accordance with § ~~9-6-14-7-1~~ 2.2-4007 of the Code of Virginia to receive comments on the proposed ~~chapter~~ regulation. The public hearing or hearings may be held at any time during the public comment period and, whenever practicable, no less than 15 days prior to the close of the public comment period. The public hearing or hearings may be held in such location or locations as the agency determine will best facilitate input from interested persons. In those cases where the agency elects to conduct a formal hearing, the notice shall indicate that the formal hearing will be held in accordance with § ~~9-6-14-8~~ 2.2-4009 of the Administrative Process Act.

I. The public comment period shall close no less than 60 days after publication of the ~~NOPC~~ Notice of Public Comment Period in The Virginia Register of Regulations.

J. The agency shall disseminate the ~~NOPC~~ Notice of Public Comment Period to the public via the following:

1. Distribution to the Registrar of Regulations for: a. publication in The Virginia Register of Regulations.

~~b. Publication in a newspaper of general circulation published at the state capital and such other newspapers as the agency may deem appropriate.~~

2. Distribution by mail or e-mail to persons on the list or lists established under subsection A of this section.

K. The agency shall make provision for receiving comments pertaining to the proposed regulation by regular mail, the Internet, or facsimile. The agency shall prepare a summary of comments received in response to the ~~NOPC~~ Notice of Public

Comment Period and the agency's response to the comments received. The agency shall send a draft of the summary of comments to all public commenters on the proposed ~~chapter~~ regulation at least five days before final adoption of the ~~chapter~~ regulation. The agency shall submit the summary and agency response and, if requested, submit the full comments to the approving authority. The summary, and the agency response, and the comments shall become a part of the agency file and after final action on the ~~chapter~~ regulation by the approving authority, made available, upon request, to interested persons.

L. If the director determines that the process to adopt, amend or repeal any ~~chapter~~ regulation should be terminated after approval of the draft proposed ~~chapter~~ regulation by the approving authority, the director shall present to the approving authority for their consideration a recommendation and rationale for the withdrawal of the proposed ~~chapter~~ regulation.

M. Completion of the remaining steps in the adoption process shall be carried out in accordance with the Administrative Process Act. ~~The agency shall establish and maintain a list or lists consisting of persons expressing an interest in the adoption, amendment or repeal of chapters.~~

4 VAC 50-10-40. Transition. (Repealed.)

~~A. All regulatory actions for which a NOIRA has been published in The Virginia Register of Regulations prior to July 13, 1994, shall be processed in accordance with the emergency amendments to Regulatory Public Participation Procedures, 4 VAC 50-10-10 et seq., effective from June 30, 1993 until June 29, 1994, unless sooner modified or vacated or superseded by permanent chapters.~~

~~B. This chapter shall supersede and repeal emergency amendments to Regulatory Public Participation Procedures, 4 VAC 50-10-10 et seq., which became effective June 30, 1993. All regulatory actions for which a NOIRA has not been published in The Virginia Register of Regulations prior to July 13, 1994, shall be processed in accordance with this chapter.~~

VA.R. Doc. No. R03-300; Filed July 22, 2003, 4:44 p.m.

TITLE 9. ENVIRONMENT

STATE AIR POLLUTION CONTROL BOARD

Title of Regulation: **9 VAC 5-40. Existing Stationary Sources (Rev. J00) (adding 9 VAC 5-40-6250 through 9 VAC 5-40-6510).**

Statutory Authority: § 10.1-1308 of the Code of Virginia.

Effective Date: September 10, 2003.

Agency Contact: Karen G. Sabasteanski, Policy Analyst, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4426, FAX (804) 698-4510 or e-mail kgsabastea@deq.state.va.us.

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Summary:

The regulation applies to commercial/industrial solid waste incinerators (CISWIs) and includes emission limits for particulate matter, carbon monoxide, dioxins/furans, hydrogen chloride, sulfur dioxide, nitrogen oxides, lead, cadmium, and mercury. Special CISWI operator training and qualification requirements are included in order to assure proper facility operation and compliance with the emissions limitations; sources are also required to prepare overall waste management plans. Compliance, emissions testing, and monitoring requirements are delineated, as well as recordkeeping and reporting of such test results. Finally, specific compliance schedules are provided.

The following changes were made to the proposed regulation:

1. Provisions intended to clarify the distinction between state and federal requirements are added or revised.
2. The compliance schedule is revised to reflect EPA's proposed federal plan.
3. Compliance schedule extension and shutdown/restart requirements, as provided in the proposed federal plan, are added.
4. Revisions reflecting proposed federal plan requirements for air curtain incinerators are made.

Summary of Public Comments and Agency's Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

REGISTRAR'S NOTICE: The proposed regulation was adopted as published in 18:26 VA.R. 3715-3736 September 9, 2002, with the changes identified below. Pursuant to § 2.2-4031 of the Code of Virginia, the adopted regulation is not published at length; however, the sections that have changed since publication of the proposed are set out.

PART II. EMISSION STANDARDS.

Article 45.

[Emission Standards for] Commercial/Industrial Solid Waste Incinerators (Rule 4-45).

9 VAC 5-40-6250. Applicability and designation of affected facility.

A. Except as provided in subsections C and D of this section, the affected facilities to which the provisions of this article apply are commercial/industrial solid waste incinerator (CISWI) units that commenced construction on or before November 30, 1999.

B. The provisions of this article apply throughout the Commonwealth of Virginia.

C. Exempted from the provisions of this article are the following:

1. Pathological waste incineration units burning 90% or more by weight (on a calendar quarter basis and excluding

the weight of auxiliary fuel and combustion air) of any combination of pathological waste, low-level radioactive waste, or chemotherapeutic waste if the owner:

- a. Notifies the board that the unit meets these criteria, and
- b. Keeps records on a calendar quarter basis of the weight of pathological waste, low-level radioactive waste, or chemotherapeutic waste burned, and the weight of all other fuels and wastes burned in the unit.

2. Agricultural waste incineration units burning 90% or more by weight (on a calendar quarter basis and excluding the weight of auxiliary fuel and combustion air) of agricultural wastes if the owner:

- a. Notifies the board that the unit meets these criteria, and
- b. Keeps records on a calendar quarter basis of the weight of agricultural waste burned, and the weight of all other fuels and wastes burned in the unit.

3. Municipal waste combustion units that meet either of the following:

a. Are regulated under [~~Article 5 (9 VAC 5-50-400 et seq.) of Part II of 9 VAC 5 Chapter 50 or Article 52 subparts Ea, Eb, or AAAA of 40 CFR Part 60 or Article 46] (9 VAC 5-40-6550 et seq.) [or Article 54 (9 VAC 5-40-7950 et seq.)] of Part II of 9 VAC 5 Chapter 40.~~

b. Burn greater than 30% municipal solid waste or refuse-derived fuel, as defined in Subparts Ea, Eb [; and] AAAA [, and BBBB] of 40 CFR Part 60, [and Article 46 (9 VAC 5-40-6550 et seq.) of Part II of 9 VAC 5 Chapter 40,] and have the capacity to burn less than 35 tons (32 megagrams) per day of municipal solid waste or refuse-derived fuel, if the owner:

- (1) Notifies the board that the unit meets these criteria, and
- (2) Keeps records on a calendar quarter basis of the weight of municipal solid waste burned, and the weight of all other fuels and wastes burned in the unit.

4. Medical waste incineration units regulated under [~~Article 5 (9 VAC 5-50-400 et seq.) of Part II of 9 VAC 5 Chapter 50 subpart Ec of 40 CFR Part 60 or Article 44 (9 VAC 5-40-6000 et seq.) of Part II of 9 VAC 5 Chapter 40] .~~

5. Small power production facility units if:

- a. The unit qualifies as a small power-production facility under § 3(17)(C) of the Federal Power Act (16 USC § 796(17)(C));
- b. The unit burns homogeneous waste (not including refuse-derived fuel) to produce electricity; and
- c. The owner notifies the board that the unit meets all of these criteria.

6. Cogeneration facility units if:

- a. The unit qualifies as a cogeneration facility under § 3(18)(B) of the Federal Power Act (16 USC § 796(18)(B));
- b. The unit burns homogeneous waste (not including refuse-derived fuel) to produce electricity and steam or other forms of energy used for industrial, commercial, heating, or cooling purposes; and
- c. The owner notifies the board that the unit meets all of these criteria.
7. Hazardous waste combustion units that are either:
- a. Required to obtain a permit under [~~9 VAC 20 Chapter 60 (9 VAC 20-60)~~ § 3005 of the Solid Waste Disposal Act (42 USC § 6901 et seq.);], or
- b. Regulated under [~~Article 2 (9 VAC 5-60-90 et seq.) of Part II of 9 VAC 5 Chapter 60~~ subpart EEE of 40 CFR Part 63].
8. Materials recovery units that combust waste for the primary purpose of recovering metals, such as primary and secondary smelters.
9. Air curtain incinerators that burn only (i) 100% wood waste, (ii) 100% clean lumber or (iii) 100% mixture of only any combination of wood waste, clean lumber, or yard waste shall meet the requirements under 9 VAC 5-40-6490.
10. Cyclonic barrel burners.
11. Rack, part, and drum reclamation units.
12. Cement kilns regulated under [~~Article 2 (9 VAC 5-60-90 et seq.) of Part II of 9 VAC 5 Chapter 60~~ subpart LLL of 40 CFR Part 63].
13. Sewage sludge incinerator units regulated under [~~Article 5 (9 VAC 5-50-400 et seq.) of Part II of 9 VAC 5 Chapter 50~~ subpart O of 40 CFR Part 60].
14. Chemical recovery units burning materials to recover chemical constituents or to produce chemical compounds where there is an existing commercial market for such recovered chemical constituents or compounds.
- a. Except as provided in subdivision 14 b of this subsection, the following types of units are considered chemical recovery units.
- (1) Units burning only pulping liquors (i.e., black liquor) that are reclaimed in a pulping liquor recovery process and reused in the pulping process.
 - (2) Units burning only spent sulfuric acid used to produce virgin sulfuric acid.
 - (3) Units burning only wood or coal feedstock for the production of charcoal.
 - (4) Units burning only manufacturing byproduct streams or residues or both containing catalyst metals that are reclaimed and reused as catalysts or used to produce commercial grade catalysts.
 - (5) Units burning only coke to produce purified carbon monoxide that is used as an intermediate in the production of other chemical compounds.
 - (6) Units burning only hydrocarbon liquids or solids to produce hydrogen, carbon monoxide, synthesis gas, or other gases for use in other manufacturing processes.
 - (7) Units burning only photographic film to recover silver.
- b. If a chemical recovery unit is not listed in subdivision 14 a of this subsection, the owner of the unit [~~can~~ may] petition the board to add the unit to the list. The petition shall contain the following:
- (1) A description of the source of the materials being burned.
 - (2) A description of the composition of the materials being burned, highlighting the chemical constituents in these materials that are recovered.
 - (3) A description (including a process flow diagram) of the process in which the materials are burned, highlighting the type, design, and operation of the equipment used in this process.
 - (4) A description (including a process flow diagram) of the chemical constituent recovery process, highlighting the type, design, and operation of the equipment used in this process.
 - (5) A description of the commercial markets for the recovered chemical constituents and their use.
 - (6) The composition of the recovered chemical constituents and the composition of these chemical constituents as they are bought and sold in commercial markets.
- c. Until the board approves the petition, the incineration unit is subject to this article.
- d. If a petition is approved, the board will amend subdivision 14 a of this subsection to add the unit to the list of chemical recovery units.
15. Laboratory analysis units that burn samples of materials for the purpose of chemical or physical analysis.
- D. The provisions of this [~~rule~~ article] do not apply to a CISWI unit if the owner makes changes that meet the definition of modification or reconstruction on or after June 1, 2001, at which point the CISWI unit becomes subject to subpart CCCC of 40 CFR Part 60.
- E. If the owner makes physical or operational changes to an existing CISWI unit primarily to comply with this article, subpart CCCC of 40 CFR Part 60 does not apply to that unit. Such changes do not qualify as modifications or reconstructions under subpart CCCC of 40 CFR Part 60.
- F. Each [~~CISWI unit~~ owner] shall [~~operate pursuant to~~ submit an application for] a federal operating permit no later than [(i)] December 1, 2003 [~~, or (ii) the effective date of the federal operating permit program to which the unit is subject, whichever is later~~]. If the unit is subject to the federal

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operating permit program as a result of some triggering requirements other than this article (for example, being a major source), then the unit may be required to apply for and obtain a federal operating permit prior to the [~~deadlines~~ deadline] in [~~subdivisions (i) and (ii) of~~] this subsection. If more than one requirement triggers the requirement to apply for a federal operating permit, the 12-month timeframe for filing a permit application is triggered by the requirement that first causes the source to be subject to the federal operating permit program.

[G. The provisions of 40 CFR Part 60 and Part 63 cited in this article are applicable only to the extent that they are incorporated by reference in Article 5 (9 VAC 5-50-400 et seq.) of Part II of 9 VAC 5 Chapter 50 and Article 2 (9 VAC 5-60-90 et seq.) of Part II of 9 VAC 5 Chapter 60.

H. The requirement of subdivision C 7 of this section with regard to obtaining a permit under § 3005 of the Solid Waste Disposal Act (42 USC § 6901 et seq.) may be met by obtaining a permit from the department as required by 9 VAC 20 Chapter 60.]

9 VAC 5-40-6260. Definitions.

A. For the purpose of [applying this article in the context of] the Regulations for the Control and Abatement of Air Pollution and [~~subsequent amendments or any orders issued by the board~~ related uses], the words or terms shall have the meanings given them in subsection C of this section.

B. As used in this [~~rule~~ article], all terms not defined herein shall have the meanings given them in 9 VAC 5 Chapter 10 [~~(9 VAC 5-10)~~], unless otherwise required by context.

C. Terms defined.

"Agricultural waste" means vegetative agricultural materials such as nut and grain hulls and chaff (e.g., almond, walnut, peanut, rice, and wheat), bagasse, orchard prunings, corn stalks, coffee bean hulls and grounds, and other vegetative waste materials generated as a result of agricultural operations.

"Air curtain incinerator" means an incinerator that operates by forcefully projecting a curtain of air across an open chamber or pit in which combustion occurs. Incinerators of this type can be constructed above or below ground and with or without refractory walls and floor. Air curtain incinerators are not to be confused with conventional combustion devices with enclosed fireboxes and controlled air technology such as mass burn, modular, and fluidized bed combustors.

"Auxiliary fuel" means natural gas, liquefied petroleum gas, fuel oil, or diesel fuel.

"Bag leak detection system" means an instrument that is capable of monitoring particulate matter loadings in the exhaust of a fabric filter (i.e., baghouse) in order to detect bag failures. A bag leak detection system includes, but is not limited to, an instrument that operates on triboelectric, light scattering, light transmittance, or other principle to monitor relative particulate matter loadings.

["Baseline compliance date" means the earlier of (i) December 1, 2003, or (ii) the date of publication of the CISWI

federal plan (Subpart III of 40 CFR Part 62) in the Federal Register.]

"Calendar quarter" means three consecutive months, not overlapping, beginning on January 1, April 1, July 1, or October 1.

"Calendar year" means 365 consecutive days [(or 366 consecutive days in leap years)] starting on January 1 and ending on December 31.

"Chemotherapeutic waste" means waste material resulting from the production or use of antineoplastic agents used for the purpose of stopping or reversing the growth of malignant cells.

"Clean lumber" means wood or wood products that have been cut or shaped and include wet, air-dried, and kiln-dried wood products. Clean lumber does not include wood products that have been painted, pigment-stained, or pressure-treated by compounds such as chromate copper arsenate, pentachlorophenol, and creosote.

"Commercial and industrial solid waste incineration (CISWI) unit" means any combustion device that combusts commercial and industrial waste, as defined in this section. The boundaries of a CISWI unit are defined as, but not limited to, the commercial or industrial solid waste fuel feed system, grate system, flue gas system, and bottom ash. The CISWI unit does not include air pollution control equipment or the stack. The CISWI unit boundary starts at the commercial and industrial solid waste hopper (if applicable) and extends through two areas:

1. The combustion unit flue gas system, which ends immediately after the last combustion chamber.
2. The combustion unit bottom ash system, which ends at the truck loading station or similar equipment that transfers the ash to final disposal. It includes all ash handling systems connected to the bottom ash handling system.

"Commercial and industrial waste" means solid waste combusted in an enclosed device using controlled flame combustion without energy recovery that is a distinct operating unit of any commercial or industrial facility (including field-erected, modular, and custom-built incineration units operating with starved or excess air), or solid waste combusted in an air curtain incinerator without energy recovery that is a distinct operating unit of any commercial or industrial facility.

"Contained gaseous material" means gases that are in a container when that container is combusted.

"Cyclonic barrel burner" means a combustion device for waste materials that is attached to a 55 gallon, open-head drum. The device consists of a lid, which fits onto and encloses the drum, and a blower that forces combustion air into the drum in a cyclonic manner to enhance the mixing of waste material and air.

"Deviation" means any instance in which an affected source subject to this article, or an owner of such a source:

1. Fails to meet any requirement or obligation established by this article, including but not limited to any emission

limitation, operating limit, or operator qualification and accessibility requirements;

2. Fails to meet any term or condition that is adopted to implement an applicable requirement in this article and that is included in the [federal] operating permit for any affected source required to obtain such a permit; or

3. Fails to meet any emission limitation, operating limit, or operator qualification and accessibility requirement in this article during startup, shutdown, or malfunction, regardless of whether such failure is permitted by this article.

"Dioxins/furans" means tetra- through octachlorinated dibenzo-p-dioxins and dibenzofurans.

"Discard" means, for purposes of this article, to burn in an incineration unit without energy recovery.

"Drum reclamation unit" means a unit that burns residues out of drums (e.g., 55 gallon drums) so that the drums can be reused.

"Energy recovery" means the process of recovering thermal energy from combustion for useful purposes such as steam generation or process heating.

"Federal operating permit" means a permit issued under Article 1 (9 VAC 5-80-50 et seq.) or Article 3 (9 VAC 5-80-360 et seq.) of Part II of 9 VAC 5 Chapter 80.

"Fabric filter" means an add-on air pollution control device used to capture particulate matter by filtering gas streams through filter media (e.g., baghouse).

"Low-level radioactive waste" means waste material which contains radioactive nuclides emitting primarily beta or gamma radiation, or both, in concentrations or quantities that exceed applicable federal or state standards for unrestricted release. Low-level radioactive waste is not high-level radioactive waste, spent nuclear fuel, or by-product material as defined by the Atomic Energy Act of 1954 (42 USC § 2014(e)(2)).

"Malfunction" means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. Failures that are caused, in part, by poor maintenance or careless operation are not malfunctions.

"Modification" or "modified CISWI unit" means a CISWI unit that has been changed later than June 1, 2001, and that meets one of the following criteria:

1. The cumulative cost of the changes over the life of the unit exceeds 50% of the original cost of building and installing the CISWI unit (not including the cost of land) updated to current costs (current dollars). To determine what systems are within the boundary of the CISWI unit used to calculate these costs, see the definition of CISWI unit.

2. Any physical change in the CISWI unit or change in the method of operating it that increases the amount of any air pollutant emitted for which § 129 or § 111 of the Clean Air Act has established standards.

"Part reclamation unit" means a unit that burns coatings off parts (e.g., tools, equipment) so that the parts can be reconditioned and reused.

"Particulate matter" means total particulate matter emitted from CISWI units as measured by Reference Method 5 or 29.

"Pathological waste" means waste material consisting of only human or animal remains, anatomical parts, anatomical tissue, the bags and containers used to collect and transport the waste material, and animal bedding (if applicable).

"Rack reclamation unit" means a unit that burns the coatings off of racks that are used to hold small items for application of a coating. The unit burns the coating overspray off of the rack so the rack can be reused.

"Reconstruction" means the rebuilding of a CISWI unit that meets the following criteria:

1. The reconstruction begins on or after June 1, 2001, and
2. The cumulative cost of the construction over the life of the incineration unit exceeds 50% of the original cost of building and installing the CISWI unit (not including land) updated to current costs (current dollars). To determine what systems are within the boundary of the CISWI unit used to calculate these costs, see the definition of CISWI unit.

"Refuse-derived fuel" means a type of municipal solid waste produced by processing municipal solid waste through shredding and size classification. This includes all classes of refuse-derived fuel, including (i) low-density fluff refuse-derived fuel through densified refuse-derived fuel and (ii) pelletized refuse-derived fuel.

"Shutdown" means the period of time after all waste has been combusted in the primary chamber.

"Solid waste" means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges that are point sources subject to permits under § 402 of the Federal Water Pollution Control Act, as amended (33 USC § 1342), or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended (42 USC § 2014). For purposes of this article, solid waste does not include the waste burned in the units described in 9 VAC 5-40-6250 C.

"Standard conditions" means, when referring to units of measure, a temperature of 68 degrees Fahrenheit (20°C) and a pressure of 1 atmosphere (101.3 kilopascals).

"Startup period" means the period of time between the activation of the system and the first charge to the unit.

"Wet scrubber" means an add-on air pollution control device that utilizes an aqueous or alkaline scrubbing liquor to collect particulate matter (including nonvaporous metals and

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condensed organics), or to absorb and neutralize acid gases, or both.

"Wood waste" means untreated wood and untreated wood products, including tree stumps (whole or chipped), trees, tree limbs (whole or chipped), bark, sawdust, chips, scraps, slabs, millings, and shavings. Wood waste does not include:

1. Grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs from residential, commercial/retail, institutional, or industrial sources as part of maintaining yards or other private or public lands.
2. Construction, renovation, or demolition wastes.
3. Clean lumber.

9 VAC 5-40-6270. [Limit Standard] for particulate matter.

No owner or other person shall cause or permit to be discharged into the atmosphere from any CISWI any particulate emissions in excess of 70 milligrams per dry standard cubic meter, measured at 7.0% oxygen, dry basis at standard conditions.

9 VAC 5-40-6280. [Limit Standard] for carbon monoxide.

No owner or other person shall cause or permit to be discharged into the atmosphere from any CISWI any carbon monoxide emissions in excess of 157 parts per million by dry volume, measured at 7.0% oxygen, dry basis at standard conditions.

9 VAC 5-40-6290. [Limit Standard] for dioxins/furans.

No owner or other person shall cause or permit to be discharged into the atmosphere from any CISWI any dioxin/furan emissions in excess of 0.41 nanograms per dry standard cubic meter (toxic equivalency basis), measured at 7.0% oxygen, dry basis at standard conditions.

9 VAC 5-40-6300. [Limit Standard] for hydrogen chloride.

No owner or other person shall cause or permit to be discharged into the atmosphere from any CISWI any hydrogen chloride emissions in excess of 62 parts per million by dry volume, measured at 7.0% oxygen, dry basis at standard conditions.

9 VAC 5-40-6310. [Limit Standard] for sulfur dioxide.

No owner or other person shall cause or permit to be discharged into the atmosphere from any CISWI any sulfur dioxide emissions in excess of 20 parts per million by dry volume, measured at 7.0% oxygen, dry basis at standard conditions.

9 VAC 5-40-6320. [Limit Standard] for nitrogen oxides.

No owner or other person shall cause or permit to be discharged into the atmosphere from any CISWI any nitrogen oxide emissions in excess of 388 parts per million by dry volume, measured at 7.0% oxygen, dry basis at standard conditions.

9 VAC 5-40-6330. [Limit Standard] for lead.

No owner or other person shall cause or permit to be discharged into the atmosphere from any CISWI any lead

emissions in excess of 0.04 milligrams per dry standard cubic meter, measured at 7.0% oxygen, dry basis at standard conditions.

9 VAC 5-40-6340. [Limit Standard] for cadmium.

No owner or other person shall cause or permit to be discharged into the atmosphere from any CISWI any cadmium emissions in excess of 0.004 milligrams per dry standard cubic meter, measured at 7.0% oxygen, dry basis at standard conditions.

9 VAC 5-40-6350. [Limit Standard] for mercury.

No owner or other person shall cause or permit to be discharged into the atmosphere from any CISWI any mercury emissions in excess of 0.47 milligrams per dry standard cubic meter, measured at 7.0% oxygen, dry basis at standard conditions.

9 VAC 5-40-6360. [Limit Standard] for visible emissions.

A. The provisions of Article 1 (9 VAC 5-40-60 et seq.) of 9 VAC 5 Chapter 40 (Emission Standards for Visible Emissions) apply except that the provisions in subsection B of this section apply instead of 9 VAC 5-40-80.

B. No owner or other person shall cause or permit to be discharged into the atmosphere from any CISWI any visible emissions that exhibit greater than 10% opacity.

9 VAC 5-40-6370. [No change from proposed.]

9 VAC 5-40-6380. [No change from proposed.]

9 VAC 5-40-6390. Standard for toxic pollutants.

~~The provisions of [Article 3 (9 VAC 5-40-160 et seq.) of 9 VAC 5 Chapter 40 (Emission Standards for Toxic Pollutants, Rule 4-3) Article 4 (9 VAC 5-60-200 et seq.) of 9 VAC 5 Chapter 60 (Emission Standards for Toxic Pollutants, Rule 6-4)] apply.~~

9 VAC 5-40-6400. Operator training and qualification.

A. No CISWI unit shall be operated unless a fully trained and qualified CISWI unit operator is accessible, whether at the facility or capable of being at the facility within one hour. The trained and qualified CISWI unit operator may operate the CISWI unit directly or be the direct supervisor of one or more other plant personnel who operate the unit. If all qualified CISWI unit operators are temporarily not accessible, the procedures in subsection J of this section shall be followed.

B. Operator training and qualification shall be obtained through a program approved by the board [~~for Waste Management Facility Operators~~] or by completing the requirements included in subsection C of this section.

C. Training shall be obtained by completing an incinerator operator training course that includes, at a minimum, the following:

1. Training on the following subjects:

- a. Environmental concerns, including types of emissions.
- b. Basic combustion principles, including products of combustion.

c. Operation of the specific type of incinerator to be used by the operator, including proper startup, waste charging, and shutdown procedures.

d. Combustion controls and monitoring.

e. Operation of air pollution control equipment and factors affecting performance (if applicable).

f. Inspection and maintenance of the incinerator and air pollution control devices.

g. Actions to correct malfunctions or conditions that may lead to malfunction.

h. Bottom and fly ash characteristics and handling procedures.

i. Applicable federal, state, and local regulations, including Occupational Safety and Health Administration workplace standards.

j. Pollution prevention.

k. Waste management practices.

2. An examination designed and administered by the instructor.

3. Written material covering the training course topics that can serve as reference material following completion of the course.

D. The operator training course shall be completed by the later of the following dates:

1. [~~The final compliance date in 9 VAC 5-40-6420-A~~ One year after the baseline compliance date].

2. Six months after CISWI unit startup.

3. Six months after an employee assumes responsibility for operating the CISWI unit or assumes responsibility for supervising the operation of the CISWI unit.

E. Operator qualification shall be obtained by completing a training course that satisfies the criteria under subsection B of this section. Qualification is valid from the date on which the training course is completed and the operator successfully passes the examination required under subdivision C 2 of this section.

F. To maintain operator qualification, the operator shall complete an annual review or refresher course covering, at a minimum, the following topics:

1. Update of regulations.

2. Incinerator operation, including startup and shutdown procedures, waste charging, and ash handling.

3. Inspection and maintenance.

4. Responses to malfunctions or conditions that may lead to malfunction.

5. Discussion of operating problems encountered by attendees.

G. Lapsed operator qualification shall be renewed when the operator:

1. For a lapse of less than three years, completes a standard annual refresher course described in subsection F of this section, or

2. For a lapse of three years or more, repeats the initial qualification requirements in subsection E of this section.

H. Site-specific documentation shall be available at the facility and readily accessible for all CISWI unit operators that addresses the topics described in subdivisions H 1 through 10 of this subsection. The owner shall maintain this information and the training records required by [~~subsection~~] subdivision I 3 of this section in a manner that they can be readily accessed and are suitable for inspection upon request.

1. Summary of the applicable standards under this article.

2. Procedures for receiving, handling, and charging waste.

3. Incinerator startup, shutdown, and malfunction procedures.

4. Procedures for maintaining proper combustion air supply levels.

5. Procedures for operating the incinerator and associated air pollution control systems within the standards established under this article.

6. Monitoring procedures for demonstrating compliance with the incinerator operating limits.

7. Reporting and recordkeeping procedures.

8. The waste management plan required under 9 VAC 5-40-6410.

9. Procedures for handling ash.

10. A list of the wastes burned during the emission test.

I. A program for reviewing the following information shall be established for each incinerator operator:

1. The initial review of the information listed in subsection H of this section shall be conducted by the later of the following dates:

a. [~~The final compliance date in 9 VAC 5-40-6420-A~~ One year after the baseline compliance date].

b. Six months after CISWI unit startup.

c. Six months after being assigned to operate the CISWI unit.

2. Subsequent annual reviews of the information listed in subsection H of this section shall be conducted no later than 12 months following the previous review.

3. The following information shall be maintained:

a. Records showing the names of CISWI unit operators who have completed review of the information in subsection H of this section as required by this subsection, including the date of the initial review and all subsequent annual reviews.

b. Records showing the names of the CISWI operators who have completed the operator training requirements under subsection C of this section, met the criteria for

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qualification under subsection E of this section, and maintained or renewed their qualification under subsection F or G of this section. Records shall include documentation of training, the dates of the initial refresher training, and the dates of their qualification and all subsequent renewals of such qualifications.

c. For each qualified operator, the telephone or pager number at which they can be reached during operating hours.

J. If all qualified operators are temporarily not accessible (i.e., not at the facility and not able to be at the facility within one hour), one of the following procedures shall be followed:

1. When all qualified operators are not accessible for more than 8 hours, but less than two weeks, the CISWI unit may be operated by other plant personnel familiar with the operation of the CISWI unit who have completed a review of the information specified in subsection H of this section within the past 12 months. The period when all qualified operators were not accessible shall be recorded, and this deviation shall be included in the annual report as specified in 9 VAC 5-40-6480 G.

2. When all qualified operators are not accessible for two weeks or more, the owner shall perform the following:

a. Notify the board of this deviation in writing within 10 days, including the cause of the deviation, what is being done to ensure that a qualified operator is accessible, and the anticipated date when a qualified operator will be accessible.

b. Submit a status report to the board every 4 weeks outlining what is being done to ensure that a qualified operator is accessible, the anticipated date when a qualified operator will be accessible, and a request for approval from the board to continue operation of the CISWI unit. The first status report shall be submitted 4 weeks after the board has been notified of the deviation under subdivision 2 a of this subsection. If the board disapproves the request to continue operation of the CISWI unit, the CISWI unit may continue operation for 90 days. After 90 days, the CISWI unit shall cease operation. Operation of the unit may resume if the following requirements are met:

(1) A qualified operator is accessible as required under subsection A of this section.

(2) The board is notified that a qualified operator is accessible and that operation is resuming.

K. [The requirements of subsection B of this section with regard to obtaining operator training qualifications through a program approved by the board may be met by obtaining a license from the Board for Waste Management Facility Operators.] All training [and licensing] shall be conducted in accordance with [~~§ 54.1-2212~~ Chapter 22.1 (§ 54.1-2209 et seq.) of Title 54.1] of the Code of Virginia [and with 18 VAC 155 Chapter 20].

[L. No owner of an affected facility shall allow the facility to be operated at any time unless a person is on duty who is responsible for the proper operation of the facility and has a

license from the Board for Waste Management Facility Operators in the correct classification. No provision of this article shall relieve any owner from the responsibility to comply in all respects with the requirements of Chapter 22.1 (§ 54.1-2209 et seq.) of Title 54.1 of the Code of Virginia and with 18 VAC 155 Chapter 20.]

9 VAC 5-40-6410 Waste management plan.

A. The owner of an affected facility shall prepare a written waste management plan that identifies both the feasibility and the methods used to reduce or separate certain components of solid waste from the waste stream in order to reduce or eliminate toxic emissions from incinerated waste.

B. The waste management plan shall be submitted no later than [~~the date specified in 9 VAC 5-40-6420 B-4~~ six months after the baseline compliance date].

C. The waste management plan shall include consideration of the reduction or separation of waste-stream elements such as paper, cardboard, plastics, glass, batteries, or metals; or the use of recyclable materials. The plan shall identify any additional waste management measures; and the [~~source~~ owner of an affected facility] shall implement those measures considered practical and feasible, based on the effectiveness of waste management measures already in place, the costs of additional measures, the emissions reductions expected to be achieved, and any other environmental or energy impacts they might have.

9 VAC 5-40-6420. Compliance schedule.

A. [~~CISWI units shall achieve final compliance as expeditiously as practicable after approval by the U.S. Environmental Protection Agency of the Section 111(d) Plan, but no later than either December 1, 2005, or three years after approval by the U.S. Environmental Protection Agency of the Section 111(d) Plan, whichever is earlier. The owner of a CISWI unit planning to continue operation and achieve compliance with this article by the date one year after the baseline compliance date shall complete the following:~~

1. Comply with the operator training and qualification requirements and inspection requirements, if applicable, of 9 VAC 5-40-6400 by the date one year after the baseline compliance date.

2. Submit a waste management plan no later than six months after the baseline compliance date.

3. Achieve final compliance by the date one year after the baseline compliance date. The final compliance increment of progress shall be achieved by incorporation of all process changes and completion of retrofit construction of control devices, as specified in the final control plan, in order that the affected unit brought online operates all necessary process changes and air pollution control devices as designed.

4. Conduct the initial emission test no later than 90 days after the final compliance date specified in subdivision 3 of this subsection.

5. Submit an initial report, including the results of the initial emission test, no later than 60 days following the initial emission test as required by 9 VAC 5-40-6480 E.

B. The owner of a CISWI unit planning to continue operation and achieve compliance with this article after the date one year after the baseline compliance date and before the date two years after the baseline compliance date shall (i) petition for an extension of the final compliance date specified in subdivision A 3 of this section by meeting the requirements of 9 VAC 5-40-6421, and shall have been granted the extension by the board; and (ii) meet the increments of progress in subsection C of this section. The final compliance increment of progress shall be achieved by completion of the following:

1. Comply with the operator training and qualification requirements and inspection requirements, if applicable, of 9 VAC 6-40-6400 by the date one year after the baseline compliance date.
2. Submit a waste management plan no later than six months after the baseline compliance date.
3. Achieve final compliance by the date two years after the baseline compliance date. The final compliance increment of progress shall be achieved by incorporation of all process changes and completion of retrofit construction of control devices, as specified in the final control plan, in order that the affected unit brought online operates all necessary process changes and air pollution control devices as designed.
4. Conduct the initial emission test no later than 90 days after the final compliance date specified in subdivision 3 of this subsection.
5. Submit an initial report, including the result of the initial emission test, no later than 60 days following the initial emission test as required by 9 VAC 5-40-6480 E.]

~~[B. Sources C. The owner of a CISWI unit]~~ planning to achieve compliance ~~[more later]~~ than one year ~~[following approval by the U.S. Environmental Protection Agency of the Section 111(d) Plan after the baseline compliance date]~~ shall meet ~~[the earlier of]~~ the following increments of progress:

1. Submit and maintain a final control plan ~~[no later than six months after approval by the U.S. Environmental Protection Agency of the Section 111(d) Plan; or by the date six months after the baseline compliance date.]~~
2. Achieve final compliance ~~[no later than three years after approval by the U.S. Environmental Protection Agency of the Section 111(d) Plan or December 1, 2005 by the date two years after the baseline compliance date]~~.

~~[G. D.]~~ The owner shall notify the board as increments of progress are achieved. Notification of achievement of increments of progress shall include the following:

1. Notification that the increment of progress has been achieved.
2. Any items required to be submitted with each increment of progress.
3. Signature of the owner of the CISWI unit.

~~[D. E.]~~ Notifications for achieving increments of progress shall be postmarked no later than 10 business days after the compliance date for the increment.

~~[E. F.]~~ If an increment of progress is not met, the owner of the affected source shall submit a notification to the board postmarked within 10 business days after the date for that increment of progress. The owner shall continue to submit reports each subsequent calendar month until the increment of progress is met.

~~[F. G.]~~ The control plan increment of progress shall meet the following requirements:

1. Submittal of the final control plan, which shall include the following:
 - a. A description of the devices for air pollution control and process changes that will be used to comply with the emission limitations and other requirements of this article;
 - b. The types of waste to be burned;
 - c. The maximum design waste burning capacity;
 - d. The anticipated maximum charge rate; and
 - e. If applicable, the petition for site-specific operating limits under 9 VAC 5-40-6430 D.
2. Maintenance of a copy of the final control plan onsite.

~~[G. For the final compliance increment of progress, the owner of the affected source shall complete all process changes and retrofit construction of control devices, as specified in the final control plan, so that, if the affected CISWI unit is brought online, all necessary process changes and air pollution control devices would operate as designed.~~

~~H. If a CISWI unit is closed but will be restarted prior to the final compliance date, the increments of progress specified in subsection B of this section shall be met.~~

~~I. If a CISWI unit is closed but will be restarted after the final compliance date, the owner shall complete emission control retrofits and meet the emission limitations and operating limits on the date the unit restarts operation.~~

~~J. If a CISWI unit is to close rather than comply with this article, the owner shall submit a closure notification, including the date of closure, to the board by the date the final control plan is due.]~~

[9 VAC 5-40-6421. Compliance schedule extension.

The owner of a CISWI unit planning to continue operation and achieve compliance with this article after the date one year after the baseline compliance date and before the date two years after the baseline compliance date shall petition the board for an extension using the following procedures:

1. The request for an extension shall be submitted to the board on or before the date two months after the baseline compliance date.
2. The request shall include documentation of the analyses undertaken to support the need for an extension, including an explanation of why the final compliance date specified in 9 VAC 5-40-6420 A 3 cannot be met, and why the

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requested extension date is needed to provide sufficient time for design, fabrication, and installation of the emissions control systems necessary to meet the requirements of this article. No request will be granted based upon the avoidance of costs.

9 VAC 5-40-6422. Shutdown and restart.

A. The owner of a CISWI unit planning to permanently shut down rather than comply with the complete set of requirements in this article shall complete the following:

1. If shutdown is planned to be completed by the date one year after the baseline compliance date, then shutdown must occur no later than the date one year after the baseline compliance date. The federal operating permit requirements of 9 VAC 5-40-6250 F shall be met regardless of when shutdown occurs.

2. If shutdown is planned but cannot be achieved by the date one year after the baseline compliance date, the owner of a CISWI unit shall petition the board for and be granted an extension using the following procedures:

a. Submit the request for an extension to the board by the date two months after the baseline compliance date. The request shall include the following:

(1) Documentation of the analyses undertaken to support the need for an extension, including an explanation of why the requested extension date is sufficient for shutdown while the date one year after the baseline compliance date is not sufficient. No request will be granted based upon the avoidance of costs. Documentation shall include an evaluation of the option to transport waste offsite to a commercial or municipal waste treatment or disposal facility or both on a temporary or permanent basis.

(2) Documentation of incremental steps of progress, including dates for completing the increments of progress, that will be taken toward shutdown.

b. Shutdown shall occur no later than the date two years after the baseline compliance date.

3. Compliance with the operator training and qualification requirements and inspection requirements, if applicable, of 9 VAC 5-40-6400 shall be achieved by the date one year after the baseline compliance date.

4. A legally binding closure agreement shall be submitted to the board by the date six months after the baseline compliance date. The closure agreement shall specify the date by which operation will cease. The closure date shall be no later than the date two years after the baseline compliance date.

5. The federal operating permit requirements of 9 VAC 5-40-6250 F shall be met regardless of when shutdown occurs.

B. If the CISWI unit is temporarily shut down and restarted for the purpose of continuing operation, the following requirements shall be met. The federal operating permit requirements of 9 VAC 5-40-6250 F shall be met at the time the unit is restarted.

1. If operation is planned to continue and compliance is planned to be achieved by the date one year after the baseline compliance date, the requirements of 9 VAC 5-40-6420 A shall apply.

2. If operation is planned to continue and compliance is planned to be achieved on or before the date two years after the baseline compliance date, the requirements of 9 VAC 5-40-6420 B shall be met. The owner of a CISWI unit shall have first requested an extension from the initial compliance date by following the requirements of 9 VAC 5-40-6421, and shall have been granted the extension by the board.

3. If the unit is restarted after the date one year after the baseline compliance date and resumes operation, but the owner has not previously requested an extension by meeting the requirements of 9 VAC 5-40-6421, the owner shall complete the requirements of 9 VAC 5-40-6420 A at the time the unit is restarted. Upon restarting the unit, the owner shall have incorporated all process changes and completed retrofit construction of control devices in order that the affected unit brought online operates all necessary process changes and air pollution control devices as designed.

C. For purposes of this section, the term "shutdown" shall have the meaning specified in 9 VAC 5 Chapter 10.]

9 VAC 5-40-6430. [No change from proposed.]

9 VAC 5-40-6440. [No change from proposed.]

9 VAC 5-40-6450. Test methods and procedures.

A. The provisions governing test methods and procedures shall be as follows:

1. With regard to the emissions standards in 9 VAC 5-40-6370, 9 VAC 5-40-6380, and 9 VAC 5-40-6390, the provisions of 9 VAC 5-40-30 (Emission testing) apply.

2. With regard to the emission limits in 9 VAC 5-40-6270 through 9 VAC 5-40-6360, the following provisions apply:

a. 9 VAC 5-40-30 D and G.

b. 40 CFR 60.8 [~~(b) through (f)~~], with the exception of paragraph (a)].

c. Subsections B through H of this section.

B. All emission tests shall consist of a minimum of three test runs conducted under conditions representative of normal operations.

C. The owner shall document that the waste burned during the emission test is representative of the waste burned under normal operating conditions by maintaining a log of the quantity of waste burned (as required in 9 VAC 5-40-6480 B 2 a) and the types of waste burned during the emission test.

D. All emission tests shall be conducted using the following minimum run durations and reference methods:

1. For particulate matter: 3-run average (one hour minimum sample time per run), Reference Method 5 or 29.

2. For carbon monoxide: 3-run average (one hour minimum sample time per run), Reference Method 10, 10A, or 10B.
3. For dioxins/furans: 3-run average (one hour minimum sample time per run), Reference Method 23.
4. For hydrogen chloride: 3-run average (one hour minimum sample time per run), Reference Method 26A.
5. For sulfur dioxide: 3-run average (one hour minimum sample time per run), Reference Method 6 or 6c.
6. For nitrogen oxides: 3-run average (one hour minimum sample time per run), Reference Methods 7, 7A, 7C, 7D, or 7E.
7. For lead: 3-run average (one hour minimum sample time per run), Reference Method 29.
8. For cadmium: 3-run average (one hour minimum sample time per run), Reference Method 29.
9. For mercury: 3-run average (one hour minimum sample time per run), Reference Method 29.
10. For visible emissions: six-minute average, Reference Method 9.

E. Reference Method 1 shall be used to select the sampling location and number of traverse points.

F. Reference Method 3A or 3B shall be used for gas composition analysis, including measurement of oxygen concentration. Reference Method 3A or 3B shall be used simultaneously with each method.

G. All pollutant concentrations, except for opacity, shall be adjusted to 7.0% oxygen using the following equation:

$$C_{adj} = C_{meas} (20.9 - 7) / (20.9 - \% O_2)$$

where:

C_{adj} = pollutant concentration adjusted to 7.0% oxygen;

C_{meas} = pollutant concentration measured on a dry basis;

$(20.9-7)$ = 20.9% oxygen - 7.0% oxygen (defined oxygen correction basis);

20.9 = oxygen concentration in air, percent; and

$\%O_2$ = oxygen concentration measured on a dry basis, percent.

H. The owner of an affected facility shall determine the dioxins/furans toxic equivalency as follows:

1. Measure the concentration of each dioxin/furan tetra-through octa-congener emitted using EPA Method 23.
2. For each dioxin/furan congener measured in accordance with subdivision 1 of this subsection, multiply the congener concentration by its corresponding toxic equivalency factor specified in Table 4-45B of this article.

TABLE 4-45B.

TOXIC EQUIVALENCY FACTORS

Dioxin/furan congener	Toxic equivalency factor
2,3,7,8-tetrachlorinated dibenzo-p-dioxin	1
1,2,3,7,8-pentachlorinated dibenzo-p-dioxin	0.5
1,2,3,4,7,8-hexachlorinated dibenzo-p-dioxin	0.1
1,2,3,7,8,9-hexachlorinated dibenzo-p-dioxin	0.1
1,2,3,6,7,8-hexachlorinated dibenzo-p-dioxin	0.1
1,2,3,4,6,7,8-heptachlorinated dibenzo-p-dioxin	0.01
Octachlorinated dibenzo-p-dioxin	0.001
2,3,7,8-tetrachlorinated dibenzofuran	0.1
2,3,4,7,8-pentachlorinated dibenzofuran	0.5
1,2,3,7,8-pentachlorinated dibenzofuran	0.05
1,2,3,4,7,8-hexachlorinated dibenzofuran	0.1
1,2,3,6,7,8-hexachlorinated dibenzofuran	0.1
1,2,3,7,8,9-hexachlorinated dibenzofuran	0.1
2,3,4,6,7,8-hexachlorinated dibenzofuran	0.1
1,2,3,4,6,7,8-heptachlorinated dibenzofuran	0.01
1,2,3,4,7,8,9-heptachlorinated dibenzofuran	0.01
Octachlorinated dibenzofuran	0.001

3. Sum the products calculated in accordance with subdivision 2 of this subsection to obtain the total concentration of dioxins/furans emitted in terms of toxic equivalency.

9 VAC 5-40-6460. Compliance

A. The provisions governing compliance shall be as follows:

1. With regard to the emissions standards in 9 VAC 5-40-6370, 9 VAC 5-40-6380, and 9 VAC 5-40-6390, the provisions of 9 VAC 5-40-20 (Compliance) apply.
2. With regard to the emission limits in 9 VAC 5-40-6270 through 9 VAC 5-40-6360, the following provisions apply:
 - a. 9 VAC 5-40-20 B, C, D, and E,
 - b. 40 CFR 60.11, and
 - c. Subsections B and C of this section.

B. The owner of an affected facility shall conduct an initial emission test to determine compliance with the emission limitations in 9 VAC 5-40-6270 through 9 VAC 5-40-6360 and to establish operating limits using the procedures in 9 VAC 5-40-6430. The initial emission test shall be conducted using the reference methods and procedures in 9 VAC 5-40-6450, and shall be conducted no later than [480 90] days after the final compliance date specified in 9 VAC 5-40-6420 A [or B, as applicable].

C. The owner of an affected facility shall conduct an annual emission test for particulate matter, hydrogen chloride, and opacity for each CISWI unit to determine compliance with the emission limitations under 9 VAC 5-40-6270 through 9 VAC 5-40-6360 as follows:

1. The annual emission test shall be conducted using the test methods and procedures in 9 VAC 5-40-6450.

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2. The operating limits specified in 9 VAC 5-40-6430 shall be continuously monitored. Operation above the established maximum or below the established minimum operating limits constitutes a deviation from the established operating limits. Three-hour rolling average values shall be used to determine compliance (except for baghouse leak detection system alarms) unless a different averaging period is established under 9 VAC 5-40-6430 D. Operating limits do not apply during emission tests.

3. Only the same types of waste used to establish operating limits shall be burned during the emission test.

4. Annual emission tests for particulate matter, hydrogen chloride, and opacity shall commence within 12 months following the initial emission test. Subsequent annual emission tests shall be conducted within 12 months following the previous one.

5. The owner of an affected facility may conduct emission testing less often if the unit has test data for at least three years, and all emission tests for the pollutant (particulate matter, hydrogen chloride, or opacity) over three consecutive years show that the unit complies with the emission limitation. In this case, no emission test is required for that pollutant for the next two years. The owner shall conduct an emission test during the third year and no more than 36 months following the previous emission test.

6. If the CISWI unit continues to meet the emission limitation for particulate matter, hydrogen chloride, or opacity, the owner may conduct emission tests for these pollutants every third year, but each test shall be within 36 months of the previous test.

7. If an emission test shows a deviation from an emission limitation for particulate matter, hydrogen chloride, or opacity, the owner shall conduct annual emission tests for that pollutant until all emission tests over a three-year period show compliance.

8. A repeat emission test may be conducted at any time to establish new values for the operating limits. The board may request a repeat emission test at any time. The emission test shall be repeated if the feed stream is different than the feed streams used during any emission test used to demonstrate compliance.

9 VAC 5-40-6470. [No change from proposed.]

9 VAC 5-40-6480. Recordkeeping and reporting.

A. The provisions governing recordkeeping and reporting shall be as follows:

1. With regard to the emissions standards in 9 VAC 5-40-6370, 9 VAC 5-40-6380, and 9 VAC 5-40-6390, the provisions of 9 VAC 5-40-50 (Notification, records and reporting) apply.

2. With regard to the emission limits in 9 VAC 5-40-6270 through 9 VAC 5-40-6360, the following provisions apply:

- a. 9 VAC 5-40-50 F and H,
- b. 40 CFR 60.7, and
- c. Subsections B through J of this section.

B. The following records, as applicable, shall be maintained for a period of at least five years:

1. Calendar date of each record.

2. Records of the following data:

a. The CISWI unit charge dates, times, weights, and hourly charge rates.

b. Liquor flow rate to the wet scrubber inlet every 15 minutes of operation, as applicable.

c. Pressure drop across the wet scrubber system every 15 minutes of operation or amperage to the wet scrubber every 15 minutes of operation, as applicable.

d. Liquor pH as introduced to the wet scrubber every 15 minutes of operation, as applicable.

e. For affected CISWI units that establish operating limits for controls other than wet scrubbers under 9 VAC 5-40-6430 D, the owner shall maintain data collected for all operating parameters used to determine compliance with the operating limits.

f. If a fabric filter is used to comply with the emission limitations, the owner shall record the date, time, and duration of each alarm and the time corrective action was initiated and completed, and a brief description of the cause of the alarm and the corrective action taken. The owner shall also record the percent of operating time during each six-month period that the alarm sounds, calculated as specified in 9 VAC 5-40-6430 C.

3. Identification of calendar dates and times for which monitoring systems used to monitor operating limits were inoperative, inactive, malfunctioning, or out of control (except for downtime associated with zero and span and other routine calibration checks). Identify the operating parameters not measured, the duration, reasons for not obtaining the data, and a description of corrective actions taken.

4. Identification of calendar dates, times, and durations of malfunctions, and a description of the malfunction and the corrective action taken.

5. Identification of calendar dates and times for which data show a deviation from the operating limits in Table 4-45A or a deviation from other operating limits established under 9 VAC 5-40-6430 D with a description of the deviations, reasons for such deviations, and a description of corrective actions taken.

6. The results of the initial, annual, and any subsequent emission tests conducted to determine compliance with the emission limits and to establish operating limits, as applicable. Retain a copy of the complete emission test report including calculations.

7. Records showing the names of CISWI unit operators who have completed review of the information in 9 VAC 5-40-6400 H as required by 9 VAC 5-40-6400 I, including the date of the initial review and all subsequent annual reviews.

8. Records showing the names of the CISWI operators who have completed the operator training requirements under

9 VAC 5-40-6400 A, met the criteria for qualification under 9 VAC 5-40-6400 E, and maintained or renewed their qualification under 9 VAC 5-40-6400 F or G. Records shall include documentation of training, the dates of the initial and refresher training, and the dates of their qualification and all subsequent renewals of such qualifications.

9. For each qualified operator, the telephone or pager number at which they can be reached during operating hours.

10. Records of calibration of any monitoring devices as required under [~~9 VAC 5-40-2730~~ 9 VAC 5-40-6470] A through C.

11. Equipment vendor specifications and related operation and maintenance requirements for the incinerator, emission controls, and monitoring equipment.

12. The information listed in 9 VAC 5-40-6400 H.

13. On a daily basis, a log of the quantity of waste burned and the types of waste burned.

C. All records shall be available onsite in either paper copy or computer-readable format that can be printed upon request, unless an alternative format is approved by the board.

D. The owner of an affected facility shall submit the waste management plan no later than the date specified in [~~9 VAC 5-40-6420 A for submittal of the final control plan~~ 9 VAC 5-40-6410 B].

E. The information specified in this subsection shall be submitted no later than 60 days following the initial emission test. All reports shall be signed by the facilities manager.

1. The complete emission test report for the initial emission test results obtained under 9 VAC 5-40-6460 B, as applicable.

2. The values for the site-specific operating limits established in 9 VAC 5-40-6430.

3. If a fabric filter is being used to comply with the emission limitations, documentation that a bag leak detection system has been installed and is being operated, calibrated, and maintained as required by 9 VAC 5-40-6470 C.

F. An annual report shall be submitted no later than 12 months following the submission of the information in subsection E of this section. Subsequent reports shall be submitted no more than 12 months following the previous report. If the unit is subject to permitting requirements under the federal operating permit program, the permit may require submittal of these reports more frequently.

G. The annual report required under subsection F of this section shall include the items listed in this subsection. If a deviation from the operating limits or the emission limitations occurs, deviation reports shall also be submitted as specified in 9 VAC 5-40-6480 H.

1. Company name and address.

2. Statement by a responsible official, with that official's name, title, and signature, certifying the accuracy of the content of the report.

3. Date of report and beginning and ending dates of the reporting period.

4. The values for the operating limits established pursuant to 9 VAC 5-40-6430.

5. If no deviation from any applicable emission limitation or operating limit has been reported, a statement that there was no deviation from the emission limitations or operating limits during the reporting period, and that no monitoring system used to determine compliance with the operating limits was inoperative, inactive, malfunctioning or out of control.

6. The highest recorded three-hour average and the lowest recorded three-hour average, as applicable, for each operating parameter recorded for the calendar year being reported.

7. Information recorded under subdivisions B 2 f and B 3 through 5 of this section for the calendar year being reported.

8. If an emission test was conducted during the reporting period, the results of that test.

9. If the requirements of 9 VAC 5-40-6460 C 5 or 6 were met, and no emission test was conducted during the reporting period, a statement that the facility met the requirements of 9 VAC 5-40-6460 C 5 or 6, and, therefore, no emission test during the reporting period was required.

10. Documentation of periods when all qualified CISWI unit operators were unavailable for more than eight hours, but less than two weeks.

H. Deviation reports shall be submitted in accordance with the following:

1. A deviation report shall be submitted if (i) any recorded three-hour average parameter level is above the maximum operating limit or below the minimum operating limit established under this article, (ii) the bag leak detection system alarm sounds for more than 5.0% of the operating time for the six-month reporting period, or (iii) an emission test was conducted that deviated from any emission limitation.

2. The deviation report shall be submitted by August 1 of that year for data collected during the first half of the calendar year (January 1 to June 30), and by February 1 of the following year for data collected during the second half of the calendar year (July 1 to December 31).

3. For any pollutant or parameter that deviated from the emission limitations or operating limits specified in this article, the following items shall be included in the deviation report:

a. The calendar dates and times the unit deviated from the emission limitations or operating limit requirements.

b. The averaged and recorded data for those dates.

c. Duration and causes of each deviation from the emission limitations or operating limits, and corrective actions taken.

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d. A copy of the operating limit monitoring data during each deviation and any emission test report that documents the emission levels.

e. The dates, times, number, duration, and causes for monitoring downtime incidents other than downtime associated with zero, span, and other routine calibration checks.

f. Whether each deviation occurred during a period of startup, shutdown, or malfunction, or during another period.

4. Deviations from the requirement to have a qualified operator accessible shall be reported as follows:

a. If all qualified operators are not accessible for two weeks or more, the owner shall:

(1) Submit a notification of the deviation within 10 days that includes a statement of what caused the deviation, a description of what is being done to ensure that a qualified operator is accessible, and the anticipated date when a qualified operator will be available; and

(2) Submit a status report to the board every four weeks that includes a description of what is being done to ensure that a qualified operator is accessible, the anticipated date when a qualified operator will be accessible, and request for approval from the board to continue operation of the CISWI unit.

b. If the unit was shut down by the board under the provisions of 9 VAC 5-40-6400 J 2 a due to a failure to provide an accessible qualified operator, the owner shall notify the board that the unit will resume operation once a qualified operator is accessible.

I. Initial, annual, and deviation reports shall be submitted electronically or in paper format, postmarked on or before the submittal due dates.

J. Semiannual or annual reporting dates may be changed with the approval of the board in accordance with the procedures in 40 CFR 60.19(c).

9 VAC 5-40-6490. Requirements for air curtain incinerators.

A. The owner of an affected air curtain incinerator that plans to ~~achieve compliance more than one year following approval by the U.S. Environmental Protection Agency of the Section 111(d) Plan, shall meet the following increments of progress: (i) submittal of a final control plan, and (ii) achievement of final compliance. These increments of progress shall be met no later than the dates provided in 9 VAC 5-40-6420-B~~ continue operation shall achieve final compliance by the date one year after the baseline compliance date. An air curtain incinerator that continues to operate after the date one year after the baseline compliance date without being in compliance with this article shall be considered to be in violation of this article] .

~~[B. The owner shall notify the board as increments of progress are achieved. Notification of achievement of increments of progress shall include the following:~~

~~1. Notification that the increment of progress has been achieved;~~

~~2. Any items required to be submitted with each increment of progress (see subsection C of this section), and~~

~~3. Signature of the owner of the incinerator.~~

~~Notifications for achieving increments of progress shall be postmarked no later than 10 business days after the compliance date for the increment. If the owner fails to meet an increment of progress, the owner shall submit a notification to the board postmarked within 10 business days after the due date for that increment of progress informing the board that the unit did not meet the increment. The owner shall continue to submit reports each subsequent calendar month until the increment of progress is met.~~

~~C. The control plan increment of progress shall be met as follows: (i) submit the final control plan, including a description of any devices for air pollution control and any process changes that will be used to comply with the emission limitations and other requirements of this article, and (ii) maintain an onsite copy of the final control plan.~~

~~D. For the B. In order to achieve] final compliance [increment of progress], the owner shall complete all [process equipment] changes and retrofit [construction installation] of control devices [, as specified in the final control plan,] so that [, if when] the affected [air curtain] incinerator is [brought online placed into service], all necessary [process changes equipment] and air pollution control devices [would] operate as designed [and meet the opacity limits of subsection D of this section].~~

~~[E. C.] The following shall be met if an air curtain incinerator is to be [closed shut down]:~~

~~1. If an incinerator is [closed shut down] but will be [reopened restarted] prior to the final compliance date [specified] in [9 VAC 5-40-6420 subsection] A [of this section], the owner shall [meet the increments of progress specified in 9 VAC 5-40-6420-B (i) achieve final compliance by the date one year after the baseline compliance date and (ii) meet the federal operating permit requirements of 9 VAC 5-40-6250 F on the date the incinerator restarts operation].~~

~~2. If an incinerator is [closed shut down] but will be restarted after the [final compliance date date one year after the baseline compliance date], the owner shall [(i) complete [any needed] emission control retrofits [and, (ii) meet the [emission limitations opacity limits of subsection D of this section, and (iii) meet the federal operating permit requirements of 9 VAC 5-40-6250 F] on the date the incinerator restarts operation.~~

~~3. If an incinerator is permanently [closed shut down], the owner shall [(i)] submit a closure notification, including the date of closure, to the board [by the date the final control plan is due 180 days after the final compliance date specified in subsection A of this section and (ii) meet the federal operating permit requirements of 9 VAC 5-40-6250 F regardless of when shutdown occurs].~~

~~[F. D.] After the date the initial emission test is required or completed (whichever is earlier), no owner or other person~~

shall cause or permit to be discharged into the atmosphere from any affected air curtain incinerator any emissions in excess of the following limits:

1. The opacity limitation is 10% (six-minute average), except as described in subdivision 2 of this subsection.
2. The opacity limitation is 35% (six-minute average) during the startup period that is within the first 30 minutes of operation.

[~~G.~~ E.] Except during malfunctions, the requirements of this article shall apply at all times, and each malfunction shall not exceed three hours.

[~~H.~~ F.] Air curtain incinerators shall meet the following requirements to determine compliance with the opacity limitation:

1. Compliance with the opacity limitation shall be determined using Reference Method 9.
2. An initial emission test for opacity shall be conducted no later than [~~480~~ 90] days after the final compliance date [specified in 9 VAC 5-40-6490 A].
3. After the initial emission test for opacity, annual emission tests shall be conducted no more than 12 calendar months following the date of the previous emission test.

[~~I.~~ ~~Owners~~ G. The owner] of [an] air curtain [~~incinerators~~ incinerator] shall maintain records and submit reports as follows:

1. Records of results of all initial and annual emission tests for opacity shall be kept onsite in either paper copy or electronic format, unless the board approves another format, for at least five years.
2. All records shall be made available for submittal to the board or for an inspector's onsite review.
3. An initial report shall be submitted no later than 60 days following the initial emission test for opacity that includes the following information:
 - a. The types of materials to be combusted.
 - b. The results (each six-minute average) of the initial emission tests for opacity.
4. Annual emission test results for opacity shall be submitted within 12 months following the previous report.
5. Initial and annual emission test reports for opacity shall be submitted as electronic or paper copy on or before the applicable submittal date. A copy shall be maintained onsite for a period of five years.

[H. For purposes of this section, the term "shutdown" shall have the meaning specified in 9 VAC 5 Chapter 10.]

9 VAC 5-40-6500. [No change from proposed.]

9 VAC 5-40-6510. Permits.

A permit may be required prior to beginning any of the activities specified below if the provisions of 9 VAC 5 Chapter 50 [~~(9 VAC 5-50)~~] and 9 VAC 5 Chapter 80 [~~(9 VAC 5-80)~~] apply. Owners contemplating such action should review those

provisions and contact the appropriate regional office for guidance on whether those provisions apply.

1. Construction of a facility.
2. Reconstruction (replacement of more than half) of a facility.
3. Modification (any physical change to equipment) of a facility.
4. Relocation of a facility.
5. Reactivation (restart-up) of a facility.
6. Operation of a facility.

Article 45 [~~54~~ 53.]

Emission Standards for Lithographic Printing Processes (Rule 4-45 [~~54~~ 53]).

Article 46 [~~52~~ 54.]

Standards of Performance for Municipal Waste Combustors (Rule 4-46 [~~52~~ 54]).

VA.R. Doc. No. R01-113; Filed July 22, 2003, 4:33 p.m.

Title of Regulation: 9 VAC 5-40. Existing Stationary Sources (Rev. K00) (adding 9 VAC 5-40-6550 through 9 VAC 5-40-6810).

Statutory Authority: § 10.1-1308 of the Code of Virginia.

Effective Date: September 10, 2003

Agency Contact: Karen G. Sabasteanski, Policy Analyst, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4426, FAX (804) 698-4510 or e-mail kgsabastea@deq.state.va.us.

Summary:

The regulation applies to small municipal waste combustors (SMWCs) and includes emission limits for particulate matter, carbon monoxide, dioxins/furans, hydrogen chloride, sulfur dioxide, nitrogen oxides, lead, cadmium, and mercury. Special SMWC operator training and qualification requirements are included in order to assure proper facility operation and compliance with the emissions limitations. Compliance, emissions testing, and monitoring requirements are delineated, as well as recordkeeping and reporting of such test results. Finally, specific compliance schedules are provided.

The following changes were made to the proposed regulation:

1. Provisions intended to clarify the distinction between state and federal requirements are added or revised.
2. The compliance schedule is revised to reflect final federal plan requirements.

Summary of Public Comments and Agency's Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

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REGISTRAR'S NOTICE: The proposed regulation was adopted as published in 18:26 VA.R. 3736-3764 September 9, 2002, with the changes identified below. Pursuant to § 2.2-4031 of the Code of Virginia, the adopted regulation is not published at length; however, the sections that have changed since publication of the proposed are set out.

PART II. EMISSION STANDARDS.

Article 46.

[Emission Standards for] Small Municipal Waste Combustors (Rule 4-46).

9 VAC 5-40-6550. Applicability and designation of affected facility.

A. Except as provided in subsections C and D of this section, the affected facilities to which the provisions of this article apply are small municipal waste combustion units that (i) have the capacity to combust at least 35 tons per day of municipal solid waste but no more than 250 tons per day of municipal solid waste or refuse-derived fuel, and (ii) have commenced construction on or before August 30, 1999.

B. The provisions of this article apply throughout the Commonwealth of Virginia.

C. The following provisions govern changes to municipal waste combustion units.

1. If the owner of a municipal waste combustion unit makes changes that meet the definition of modification or reconstruction after June 6, 2001, for [~~40 CFR Subpart AAAA (9 VAC 5-50-410) subpart AAAA of 40 CFR Part 60,~~], the municipal waste combustion unit becomes subject to [~~Article 5 (9 VAC 5-50-400 et seq.) of Part II of 9 VAC 5 Chapter 50 subpart AAAA of 40 CFR Part 60~~] and the provisions of this article no longer apply to that unit.

2. If the owner of a municipal waste combustion unit makes physical or operational changes to an existing municipal waste combustion unit primarily to comply with the provisions of this article, [~~Article 5 (9 VAC 5-50-400 et seq.) of Part II of 9 VAC 5 Chapter 50 subpart AAAA of 40 CFR Part 60~~] does not apply to that unit. Such changes do not constitute modifications or reconstructions under [~~40 CFR Subpart AAAA (9 VAC 5-50-410) subpart AAAA of 40 CFR Part 60~~].

D. Exempt from the provisions of this article are the following.

1. Small municipal waste combustion units that combust less than 11 tons per day and meet the following conditions.

a. The unit is subject to a federally enforceable permit limiting the amount of municipal solid waste combusted to less than 11 tons per day.

b. The owner notifies the board that the unit qualifies for the exemption.

c. The owner provides the board with a copy of the federally enforceable permit.

d. The owner keeps daily records of the amount of municipal solid waste combusted.

2. Small power production units that meet the following conditions.

a. The unit qualifies as a small power production facility under § 3(17)(C) of the Federal Power Act (16 USC § 796(17)(C)).

b. The unit combusts homogeneous waste (excluding refuse-derived fuel) to produce electricity.

c. The owner notifies the board that the unit qualifies for the exemption.

d. The board receives documentation from the owner that the unit qualifies for the exemption.

3. Cogeneration units that meet the following conditions.

a. The unit qualifies as a cogeneration facility under § 3(18)(B) of the Federal Power Act (16 USC § 796(18)(B)).

b. The unit combusts homogeneous waste (excluding refuse-derived fuel) to produce electricity and steam or other forms of energy used for industrial, commercial, heating, or cooling purposes.

c. The owner notifies the board that the unit qualifies for the exemption.

d. The board receives documentation from the owner that the unit qualifies for the exemption.

4. Municipal waste combustion units that combust only tires and meet the following conditions.

a. The unit combusts a single-item waste stream of tires and no other municipal waste (the unit can co-fire coal, fuel oil, natural gas, or other nonmunicipal solid waste).

b. The owner notifies the board that the unit qualifies for the exemption.

c. The board receives documentation from the owner that the unit qualifies for the exemption.

5. Hazardous waste combustion units that have received a permit under [~~9 VAC 20 Chapter 60 (9 VAC 20-60) § 3005 of the Solid Waste Disposal Act (42 USC § 6901 et seq.)~~].

6. Materials recovery units that combust waste mainly to recover metals. Primary and secondary smelters may qualify.

7. Co-fired units that meet the following conditions.

a. The unit has a federally enforceable permit limiting municipal solid waste combustion to 30% of the total fuel input by weight.

b. The board is notified by the owner that the unit qualifies for the exemption.

c. The owner provides the board with a copy of the federally enforceable permit.

d. The owner records the weights, each quarter, of municipal solid waste and of all other fuels combusted.

8. *Plastics/rubber recycling units that meet the following conditions.*

- a. *The pyrolysis/combustion unit is an integrated part of a plastics/rubber recycling unit.*
- b. *The owner records the weight, each quarter, of plastics, rubber, and rubber tires processed.*
- c. *The owner records the weight, each quarter, of feed stocks produced and marketed from chemical plants and petroleum refineries.*
- d. *The owner maintains the name and address of the purchaser of the feed stocks.*

9. *Units that combust fuels made from products of plastics/rubber recycling plants and meet the following criteria.*

- a. *The unit combusts gasoline, diesel fuel, jet fuel, fuel oils, residual oil, refinery gas, petroleum coke, liquefied petroleum gas, propane, or butane produced by chemical plants or petroleum refineries that use feed stocks produced by plastics/rubber recycling units.*
- b. *The unit does not combust any other municipal solid waste.*

10. *Cement kilns that combust municipal solid waste.*

11. *Air curtain incinerators that combust 100% yard waste are exempt from the requirements of this article except they shall meet the requirements of 9 VAC 5-40-6780.*

12. *Affected municipal waste combustion units that meet the following criteria.*

- a. *The owner reduces, by the final compliance dates in 9 VAC 5-40-6710, the maximum combustion capacity of the unit to less than 35 tons per day of municipal solid waste. A permit restriction or a change in the method of operation does not qualify as a reduction in capacity.*
- b. *The owner submits a final control plan and the notifications of achievement of increments of progress as specified in 9 VAC 5-40-6710 B. The final control plan shall, at a minimum, include the following.*
 - (1) *A description of the physical changes that will be made to accomplish the reduction.*
 - (2) *Calculations of the current maximum combustion capacity and the planned maximum combustion capacity after the reduction. The combustion capacity of a municipal waste combustion unit shall be calculated as specified in 9 VAC 5-40-6730 F.*

[*E. Each owner shall submit an application for a federal operating permit no later than December 6, 2003. If the unit is subject to the federal operating permit program as a result of some triggering requirement(s) other than this article (for example, being a major source), then the unit may be required to apply for and obtain a federal operating permit prior to the deadline in this subsection. If more than one requirement triggers the requirement to apply for a federal operating permit, the 12-month timeframe for filing a permit application*

is triggered by the requirement which first causes the source to be subject to the federal operating permit program.

F. *The provisions of 40 CFR Part 60 cited in this article are applicable only to the extent that they are incorporated by reference in Article 5 (9 VAC 5-50-400 et seq.) of Part II of 9 VAC 5 Chapter 50.*

G. *The requirement of subdivision D 5 of this section with regard to obtaining a permit under § 3005 of the Solid Waste Disposal Act (42 USC § 6901 et seq.) may be met by obtaining a permit from the department as required by 9 VAC 20 Chapter 60.]*

9 VAC 5-40-6560. Definitions.

A. *For the purpose of [applying this article in the context of] the Regulations for the Control and Abatement of Air Pollution [and subsequent amendments or any orders issued by the board related uses], the words or terms shall have the meanings given them in subsection C of this section.*

B. *As used in this [rule article], all terms not defined herein shall have the meanings given them in 9 VAC 5 Chapter 10 [(9 VAC 5-40)], unless otherwise required by context.*

C. *Terms defined.*

[*"Administrator" means the Administrator of the U.S. Environmental Protection Agency.]*

"Air curtain incinerator" means an incinerator that operates by forcefully projecting a curtain of air across an open chamber or pit in which combustion occurs. Incinerators of that type can be constructed above or below ground and with or without refractory walls and floor.

"Batch municipal waste combustion unit" means a municipal waste combustion unit designed so it cannot combust municipal solid waste continuously 24 hours per day because the design does not allow waste to be fed to the unit or ash to be removed during combustion.

"Calendar quarter" means three consecutive months (nonoverlapping) beginning on January 1, April 1, July 1, or October 1.

"Calendar year" means 365 (or 366 consecutive days in leap years) consecutive days starting on January 1 and ending on December 31.

"Chief facility operator" means the person in direct charge and control of the operation of a municipal waste combustion unit. That person is responsible for daily onsite supervision, technical direction, management, and overall performance of the municipal waste combustion unit.

"Class I units" mean small municipal waste combustion units subject to this article that are located at municipal waste combustion plants with an aggregate plant combustion capacity greater than 250 tons per day of municipal solid waste. See the definition in this section of "municipal waste combustion plant capacity" for specification of which units at a plant site are included in the aggregate capacity calculation.

"Class II units" mean small municipal combustion units subject to this article that are located at municipal waste combustion plants with aggregate plant combustion capacity less than or

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equal to 250 tons per day of municipal solid waste. See the definition in this section of "municipal waste combustion plant capacity" for specification of which units at a plant site are included in the aggregate capacity calculation.

"Clean wood" means untreated wood or untreated wood products including clean untreated lumber, tree stumps (whole or chipped), and tree limbs (whole or chipped). Clean wood does not include: (i) yard waste, or (ii) construction, renovation, or demolition wastes (for example, railroad ties and telephone poles) that are exempt from the definition of "municipal solid waste" in this section.

"Co-fired combustion unit" means a unit that combusts municipal solid waste with nonmunicipal solid waste fuel (for example, coal, industrial process waste). To be considered a co-fired combustion unit, the unit shall be subject to a federally enforceable permit that limits it to combusting a fuel feed stream that is 30% or less (by weight) municipal solid waste as measured each calendar quarter.

"Continuous burning" means the continuous, semicontinuous, or batch feeding of municipal solid waste to dispose of the waste, produce energy, or provide heat to the combustion system in preparation for waste disposal or energy production. Continuous burning does not mean the use of municipal solid waste solely to thermally protect the grate or hearth during the startup period when municipal solid waste is not fed to the grate or hearth.

"Continuous emission monitoring system" means a monitoring system that continuously measures the emissions of a pollutant from a municipal waste combustion unit.

"Dioxins/furans" mean tetra-through octachlorinated dibenzo-p-dioxins and dibenzofurans.

["~~Effective date of § 111(d)/129 plan approval~~" means the effective date that EPA approves the § 111(d)/129 Plan. The Federal Register specifies the date in the notice that announces EPA's approval of the § 111(d)/129 plan.]

"Eight-hour block average" means the average of all hourly emission concentrations or parameter levels when the municipal waste combustion unit operates and combusts municipal solid waste measured over any of three eight-hour periods of time: (i) midnight to 8 a.m., (ii) 8 a.m. to 4 p.m., and (iii) 4 p.m. to midnight.

["~~Federally enforceable~~" means all limitations and conditions that are enforceable by the administrator and citizens under the federal Clean Air Act or that are enforceable under other statutes administered by the administrator. Federally enforceable limitations and conditions include, but are not limited to the following:

~~1. Emission standards, alternative emission standards, alternative emission limitations, and equivalent emission limitations established pursuant to § 112 of the federal Clean Air Act as amended in 1990.~~

~~2. New source performance standards established pursuant to § 111 of the federal Clean Air Act, and emission standards established pursuant to § 112 of the federal Clean Air Act before it was amended in 1990.~~

~~3. All terms and conditions in a federal operating permit, including any provisions that limit a source's potential to emit, unless expressly designated as not federally enforceable.~~

~~4. Limitations and conditions that are part of an implementation plan established pursuant to § 110 of the federal Clean Air Act, or a § 111(d) plan.~~

~~5. Limitations and conditions that are part of a federal construction permit issued under 40 CFR 52.21 or any construction permit issued under regulations approved by EPA in accordance with 40 CFR Part 51.~~

~~6. Limitations and conditions that are part of an operating permit issued pursuant to a program approved by EPA into a SIP as meeting EPA's minimum criteria for federal enforceability, including adequate notice and opportunity for EPA and public comment prior to issuance of the final permit and practicable enforceability.~~

~~7. Limitations and conditions in a Virginia regulation or program that has been approved by EPA under subpart E of 40 CFR Part 63 for the purposes of implementing and enforcing § 112 of the federal Clean Air Act.~~

~~8. Individual consent agreements that EPA has legal authority to create.]~~

"Federal operating permit" means a permit issued under Article 1 (9 VAC 5-80-50 et seq.) of Part II of 9 VAC 5-80.

"First calendar half" means the period that starts on January 1 and ends on June 30 in any year.

"Fluidized bed combustion unit" means a unit where municipal waste is combusted in a fluidized bed of material. The fluidized bed material may remain in the primary combustion zone or may be carried out of the primary combustion zone and returned through a recirculation loop.

"Four-hour block average" means the average of all hourly emission concentrations or parameter levels when the municipal waste combustion unit operates and combusts municipal solid waste measured over any of six four-hour periods: (i) midnight to 4 a.m., (ii) 4 a.m. to 8 a.m., (iii) 8 a.m. to noon, (iv) noon to 4 p.m., (v) 4 p.m. to 8 p.m., and (vi) 8 p.m. to midnight.

"Mass burn refractory municipal waste combustion unit" means a field-erected municipal waste combustion unit that combusts municipal solid waste in a refractory wall furnace. Unless otherwise specified, that includes municipal waste combustion units with a cylindrical rotary refractory wall furnace.

"Mass burn rotary waterwall municipal waste combustion unit" means a field-erected municipal waste combustion unit that combusts municipal solid waste in a cylindrical rotary waterwall furnace.

"Mass burn waterwall municipal waste combustion unit" means a field-erected municipal waste combustion unit that combusts municipal solid waste in a waterwall furnace.

"Maximum demonstrated load of a municipal waste combustion unit" means the highest four-hour block arithmetic

average municipal waste combustion unit load achieved during four consecutive hours in the course of the most recent dioxins/furans [stack emission] test that demonstrates compliance with the applicable emission limit for dioxins/furans specified in this article.

"Maximum demonstrated temperature of the particulate matter control device" means the highest four-hour block arithmetic average flue gas temperature measured at the inlet of the particulate matter control device during four consecutive hours in the course of the most recent [stack emission] test for dioxins/furans emissions that demonstrates compliance with the limits specified in this article.

"Medical/infectious waste" means any waste generated in the diagnosis, treatment, or immunization of human beings or animals, in research pertaining thereto, or in the production or testing of biologicals that is listed in subdivisions 1 through 9 of this definition. The definition of medical/infectious waste does not include hazardous waste identified or listed under the regulations in 40 CFR Part 261; household waste, as defined in 40 CFR 261.4(b)(1); ash from incineration of medical/infectious waste, once the incineration process has been completed; human corpses, remains, and anatomical parts that are intended for interment or cremation; and domestic sewage materials identified in 40 CFR 261.4(a)(1).

1. Cultures and stocks of infectious agents and associated biologicals, including: cultures from medical and pathological laboratories; cultures and stocks of infectious agents from research and industrial laboratories; wastes from the production of biologicals; discarded live and attenuated vaccines; and culture dishes and devices used to transfer, inoculate, and mix cultures.

2. Human pathological waste, including tissues, organs, and body parts and body fluids that are removed during surgery or autopsy, or other medical procedures, and specimens of body fluids and their containers.

3. Human blood and blood products, regardless of whether containerized, including:

- a. Liquid human blood;
- b. Products of blood;
- c. Items containing unabsorbed or free-flowing blood;
- d. Items saturated or dripping or both with human blood; or
- e. Items that were saturated and dripping or both with human blood that are now caked with dried human blood; including serum, plasma, and other blood components, and their containers, which were used or intended for use in either patient care, testing and laboratory analysis or the development of pharmaceuticals. Intravenous bags are also included in this category.

4. Regardless of the presence of infectious agents, sharps that have been used in animal or human patient care or treatment or in medical, research, or industrial laboratories, including hypodermic needles, syringes (with or without the attached needle), pasteur pipettes, scalpel blades, blood vials, needles with attached tubing, and culture dishes. Also

included are other types of broken or unbroken glassware that may have been in contact with infectious agents, such as used slides and cover slips.

5. Animal waste including contaminated animal carcasses, body parts, and bedding of animals that were known to have been exposed to infectious agents during research (including research in veterinary hospitals), production of biologicals or testing of pharmaceuticals.

6. Isolation wastes including biological waste and discarded materials contaminated with blood, excretions, exudates, or secretions from humans who are isolated to protect others from certain highly communicable diseases, or isolated animals known to be infected with highly communicable diseases.

7. Unused sharps including the following unused, discarded sharps: hypodermic needles, suture needles, syringes, and scalpel blades.

8. Any waste that is contaminated or mixed with any waste listed in subdivisions 1 through 7 of this definition.

9. Any residue or contaminated soil, waste, or other debris resulting from the cleaning of a spill of any waste listed in subdivisions 1 through 8 of this definition.

"Mixed fuel-fired (pulverized coal/refuse-derived fuel) combustion unit" means a combustion unit that combusts coal and refuse-derived fuel simultaneously, in which pulverized coal is introduced into an air stream that carries the coal to the combustion chamber of the unit where it is combusted in suspension. That includes both conventional pulverized coal and micropulverized coal.

"Modification" or "modified municipal waste combustion unit" means a municipal waste combustion unit that has been modified after June 6, 2001, and that meets one of the following criteria: (i) the cumulative cost of the changes over the life of the unit exceeds 50% of the original cost of building and installing the unit (not including the cost of land) updated to current costs; or (ii) any physical change in the municipal waste combustion unit or change in the method of operating it that increases the emission level of any air pollutant for which new source performance standards have been established under § 129 or § 111 of the federal Clean Air Act. Increases in the emission level of any air pollutant are determined when the municipal waste combustion unit operates at 100% of its physical load capability and are measured downstream of all air pollution control devices. Load restrictions based on permits or other nonphysical operational restrictions cannot be considered in the determination.

"Modular excess-air municipal waste combustion unit" means a municipal waste combustion unit that combusts municipal solid waste, is not field-erected, and has multiple combustion chambers, all of which are designed to operate at conditions with combustion air amounts in excess of theoretical air requirements.

"Modular starved-air municipal waste combustion unit" means a municipal waste combustion unit that combusts municipal solid waste, is not field-erected, and has multiple combustion chambers in which the primary combustion chamber is designed to operate at substoichiometric conditions.

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"Municipal solid waste or municipal-type solid waste" means household, commercial/retail, or institutional waste. Household waste includes material discarded by residential dwellings, hotels, motels, and other similar permanent or temporary housing. Commercial/retail waste includes material discarded by stores, offices, restaurants, warehouses, nonmanufacturing activities at industrial facilities, and other similar establishments or facilities. Institutional waste includes materials discarded by schools, by hospitals (nonmedical), by nonmanufacturing activities at prisons and government facilities, and other similar establishments or facilities. Household, commercial/retail, and institutional waste does include yard waste and refuse-derived fuel. Household, commercial/retail, and institutional waste does not include used oil; sewage sludge; wood pallets; construction, renovation, and demolition wastes (which include railroad ties and telephone poles); clean wood; industrial process or manufacturing wastes; medical waste; or motor vehicles (including motor vehicle parts or vehicle fluff).

"Municipal waste combustion plant" means one or more municipal waste combustion units at the same location.

"Municipal waste combustion plant capacity" means the aggregate municipal waste combustion capacity of all municipal waste combustion units at the plant that are not subject to subparts Ea, Eb, or AAAA of 40 CFR Part 60.

"Municipal waste combustion unit" means any setting or equipment that combusts solid, liquid, or gasified municipal solid waste including, but not limited to, field-erected combustion units (with or without heat recovery), modular combustion units (starved-air or excess-air), boilers (for example, steam generating units), furnaces (whether suspension-fired, grate-fired, mass-fired, air curtain incinerators, or fluidized bed-fired), and pyrolysis/combustion units. Municipal waste combustion units do not include pyrolysis or combustion units located at a plastics or rubber recycling unit. Municipal waste combustion units do not include cement kilns that combust municipal solid waste. Municipal waste combustion units do not include internal combustion engines, gas turbines, or other combustion devices that combust landfill gases collected by landfill gas collection systems. The municipal waste combustion unit includes, but is not limited to, the municipal solid waste fuel feed system, grate system, flue gas system, bottom ash system, and the combustion unit water system. The municipal waste combustion unit does not include air pollution control equipment, the stack, water treatment equipment, or the turbine-generator set. The municipal waste combustion unit boundary starts at the municipal solid waste pit or hopper and extends through: (i) the combustion unit flue gas system, which ends immediately after the heat recovery equipment or, if there is no heat recovery equipment, immediately after the combustion chamber; (ii) the combustion unit bottom ash system, which ends at the truck loading station or similar equipment that transfers the ash to final disposal. It includes all ash handling systems connected to the bottom ash handling system; and (iii) the combustion unit water system, which starts at the feed water pump and ends at the piping that exits the steam drum or superheater.

"Particulate matter" means total particulate matter emitted from municipal waste combustion units as measured using Reference Method 5 and the procedures specified in 9 VAC 5-40-6740 D.

"Plastics or rubber recycling unit" means an integrated processing unit for which plastics, rubber, or rubber tires are the only feed materials (incidental contaminants may be in the feed materials). The feed materials are processed and marketed to become input feed stock for chemical plants or petroleum refineries. Each calendar quarter, the combined weight of the feed stock that a plastics or rubber recycling unit produces shall be more than 70% of the combined weight of the plastics, rubber, and rubber tires that recycling unit processes. The plastics, rubber, or rubber tires fed to the recycling unit may originate from separating or diverting plastics, rubber, or rubber tires from municipal or industrial solid waste. The feed materials may include manufacturing scraps, trimmings, and off-specification plastics, rubber, and rubber tire discards. The plastics, rubber, and rubber tires fed to the recycling unit may contain incidental contaminants (for example, paper labels on plastic bottles or metal rings on plastic bottle caps).

"Potential hydrogen chloride emissions" means the level of emissions from a municipal waste combustion unit that would occur from combusting municipal solid waste without emission controls for acid gases.

"Potential mercury emissions" means the level of emissions from a municipal waste combustion unit that would occur from combusting municipal solid waste without controls for mercury emissions.

"Potential sulfur dioxide emissions" means the level of emissions from a municipal waste combustion unit that would occur from combusting municipal solid waste without emission controls for acid gases.

"Pyrolysis/combustion unit" means a unit that produces gases, liquids, or solids by heating municipal solid waste. The gases, liquids, or solids produced are combusted and the emissions vented to the atmosphere.

"Reconstruction" means rebuilding a municipal waste combustion unit and meeting two criteria: (i) the reconstruction begins after June 6, 2001; and (ii) the cumulative cost of the construction over the life of the unit exceeds 50% of the original cost of building and installing the municipal waste combustion unit (not including land) updated to current costs (current dollars). To determine what systems are within the boundary of the municipal waste combustion unit used to calculate the costs, see the definition in this section of "municipal waste combustion unit."

"Refractory unit" or "refractory wall furnace" means a municipal waste combustion unit that has no energy recovery (such as through a waterwall) in the furnace of the municipal waste combustion unit.

"Refuse-derived fuel" means a type of municipal solid waste produced by processing municipal solid waste through shredding and size classification. Refuse-derived fuel includes all classes of refuse-derived fuel, including low-density fluff

refuse-derived fuel through densified refuse-derived fuel, and pelletized refuse-derived fuel.

"Same location" means the same or contiguous properties under common ownership or control, including those separated only by a street, road, highway, or other public right-of-way. Common ownership or control includes properties that are owned, leased, or operated by the same entity, parent entity, subsidiary, subdivision, or any combination thereof. Entities may include a municipality, other governmental unit, or any quasi-governmental authority (for example, a public utility district or regional authority for waste disposal).

"Second calendar half" means the period that starts on July 1 and ends on December 31 in any year.

"Shift supervisor" means the person who is in direct charge and control of operating a municipal waste combustion unit and who is responsible for onsite supervision, technical direction, management, and overall performance of the municipal waste combustion unit during an assigned shift.

"Spreader stoker, mixed fuel-fired (coal/refuse-derived fuel) combustion unit" means a municipal waste combustion unit that combusts coal and refuse-derived fuel simultaneously, in which coal is introduced to the combustion zone by a mechanism that throws the fuel onto a grate from above. Combustion takes place both in suspension and on the grate.

"Standard conditions," when referring to units of measure, means a temperature of 20°C and a pressure of 101.3 kilopascals.

"Startup period" means the period when a municipal waste combustion unit begins the continuous combustion of municipal solid waste. It does not include any warmup period during which the municipal waste combustion unit combusts fossil fuel or other solid waste fuel but receives no municipal solid waste.

[~~"Section 111(d) plan" means the portion or portions of the plan, or the most recent revision thereof, which has been approved under 40 CFR 60.27(b) in accordance with §§ 111(d)(1) and 129(b)(2) of the federal Clean Air Act, or promulgated under 40 CFR 60.27(d) in accordance with § 111(d)(2) of the federal Clean Air Act, and which implements the relevant requirements of the federal Clean Air Act.~~]

"Stoker (refuse-derived fuel) combustion unit" means a steam generating unit that combusts refuse-derived fuel in a semisuspension combusting mode, using air-fed distributors.

"Total mass dioxins/furans or total mass" means the total mass of tetra-through octachlorinated dibenzo-p-dioxins and dibenzofurans as determined using Reference Method 23 and the procedures specified in 9 VAC 5-40-6740 D.

"Twenty-four hour daily average" or "24-hour daily average" means either the arithmetic mean or geometric mean (as specified) of all hourly emission concentrations when the municipal waste combustion unit operates and combusts municipal solid waste measured during the 24 hours between midnight and the following midnight.

"Untreated lumber" means wood or wood products that have been cut or shaped and include wet, air-dried, and kiln-dried wood products. Untreated lumber does not include wood products that have been painted, pigment-stained, or pressure-treated by compounds such as chromate copper arsenate, pentachlorophenol, and creosote.

"Waterwall furnace" means a municipal waste combustion unit that has energy (heat) recovery in the furnace (for example, radiant heat transfer section) of the combustion unit.

"Yard waste" means grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs that come from residential, commercial/retail, institutional, or industrial sources as part of maintaining yards or other private or public lands. Yard waste does not include: (i) construction, renovation, and demolition wastes that are exempt from the definition of "municipal solid waste" in this section; or (ii) clean wood that is exempt from the definition of "municipal solid waste" in this section.

9 VAC 5-40-6570. [Limit Standard] for particulate matter.

A. No owner or other person shall cause or permit to be discharged into the atmosphere from any Class I unit any particulate emissions in excess of 27 milligrams per dry standard cubic meter, measured at 7.0% oxygen, three-run average.

B. No owner or other person shall cause or permit to be discharged into the atmosphere from any Class II unit any particulate emissions in excess of 70 milligrams per dry standard cubic meter, measured at 7.0% oxygen, three-run average.

9 VAC 5-40-6580. [Limit Standard] for carbon monoxide.

No owner or other person shall cause or permit to be discharged into the atmosphere from any small municipal waste combustion unit any carbon monoxide emissions in excess of the following.

1. For fluidized bed units: 100 parts per million by dry volume, measured at 7.0% oxygen, four-hour block average, arithmetic mean.

2. For fluidized bed, mixed fuel (wood/refuse-derived fuel) units: 200 parts per million by dry volume measured at 7.0% oxygen, 24-hour block average, geometric mean.

3. For mass burn rotary refractory units: 100 parts per million by dry volume measured at 7.0% oxygen, four-hour block average, arithmetic mean.

4. For mass burn rotary waterwall units: 250 parts per million by dry volume measured at 7.0% oxygen, 24-hour block average, arithmetic mean.

5. For mass burn waterwall and refractory units: 100 parts per million by dry volume measured at 7.0% oxygen, four-hour block average, arithmetic mean.

6. For mixed fuel-fired (pulverized coal/refuse-derived fuel) units: 150 parts per million by dry volume measured at 7.0% oxygen, four-hour block average, arithmetic mean.

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7. For modular starved-air and excess air units: 50 parts per million by dry volume measured at 7.0% oxygen, four-hour block average, arithmetic mean.

8. For spreader stoker, mixed fuel-fired (coal/refuse-derived fuel) units: 200 parts per million by dry volume measured at 7.0% oxygen, 24-hour daily block average, arithmetic mean.

9. For stoker, refuse-derived fuel units: 200 parts per million by dry volume measured at 7.0% oxygen, 24-hour daily block average, arithmetic mean.

9 VAC 5-40-6590. [Limit Standard] for dioxins/furans.

A. No owner or other person shall cause or permit to be discharged into the atmosphere from any Class I unit any dioxin/furan (total mass basis) emissions in excess of the following.

1. For units that do not use an electrostatic precipitator-based emission control system: 30 nanograms per dry standard cubic meter, measured at 7.0% oxygen, three-run average (minimum run duration of four hours).

2. For units that use electrostatic precipitator-based emission control system: 60 nanograms per dry standard cubic meter, measured at 7.0% oxygen, three-run average (minimum run duration of four hours).

B. No owner or other person shall cause or permit to be discharged into the atmosphere from any Class II unit any dioxin/furan emissions (total mass basis) in excess of 125 nanograms per dry standard cubic meter, measured at 7.0% oxygen, three-run average (minimum run duration of four hours).

9 VAC 5-40-6600. [Limit Standard] for hydrogen chloride.

A. No owner or other person shall cause or permit to be discharged into the atmosphere from any Class I unit any hydrogen chloride emissions in excess of 31 parts per million by dry volume or 95% reduction of potential emissions, measured at 7.0% oxygen, three-run average (minimum run duration of one hour).

B. No owner or other person shall cause or permit to be discharged into the atmosphere from any Class II unit any hydrogen chloride emissions in excess of 250 parts per million by dry volume or 50% reduction of potential emissions, measured at 7.0% oxygen, three-run average (minimum run duration of one hour).

9 VAC 5-40-6610. [Limit Standard] for sulfur dioxide.

A. No owner or other person shall cause or permit to be discharged into the atmosphere from any Class I unit any sulfur dioxide emissions in excess of 31 parts per million by dry volume or 75% reduction of potential emissions, measured at 7.0% oxygen, 24-hour daily block geometric average concentration or percent reduction.

B. No owner or other person shall cause or permit to be discharged into the atmosphere from any Class II unit any sulfur dioxide emissions in excess of 77 parts per million by dry volume or 50% reduction of potential emissions, measured at 7.0% oxygen, 24-hour daily block geometric average concentration or percent reduction.

9 VAC 5-40-6620. [Limit Standard] for nitrogen oxides.

No owner or other person shall cause or permit to be discharged into the atmosphere from any small municipal waste combustor any nitrogen oxide emissions in excess of the following:

1. For mass burn waterwall units: 200 parts per million by dry volume, measured at 7.0% oxygen, 24-hour daily block arithmetic average concentration.

2. For mass burn rotary waterwall units: 170 parts per million by dry volume measured at 7.0% oxygen, 24-hour daily block arithmetic average concentration.

3. For refuse-derived fuel units: 250 parts per million by dry volume, measured at 7.0% oxygen, 24-hour daily block arithmetic average concentration.

4. For fluidized bed units: 220 parts per million by dry volume, measured at 7.0% oxygen, 24-hour daily block arithmetic average concentration.

5. For mass burn refractory units: 350 parts per million by dry volume, measured at 7.0% oxygen, 24-hour daily block arithmetic average concentration.

6. For modular excess air units: 190 parts per million by dry volume, measured at 7.0% oxygen, 24-hour daily block arithmetic average concentration.

7. For modular starved air units: 380 parts per million by dry volume, measured at 7.0% oxygen, 24-hour daily block arithmetic average concentration.

9 VAC 5-40-6630. [Limit Standard] for lead.

A. No owner or other person shall cause or permit to be discharged into the atmosphere from any Class I unit any lead emissions in excess of 0.490 milligrams per dry standard cubic meter, measured at 7.0% oxygen, three-run average.

B. No owner or other person shall cause or permit to be discharged into the atmosphere from any Class II unit any lead emissions in excess of 1.6 milligrams per dry standard cubic meter, measured at 7.0% oxygen, three-run average.

9 VAC 5-40-6640. [Limit Standard] for cadmium.

A. No owner or other person shall cause or permit to be discharged into the atmosphere from any Class I unit any cadmium emissions in excess of 0.040 milligrams per dry standard cubic meter, measured at 7.0% oxygen, three-run average.

B. No owner or other person shall cause or permit to be discharged into the atmosphere from any Class II unit any cadmium emissions in excess of 0.10 milligrams per dry standard cubic meter, measured at 7.0% oxygen, three-run average.

9 VAC 5-40-6650. [Limit Standard] for mercury.

A. No owner or other person shall cause or permit to be discharged into the atmosphere from any Class I unit any mercury emissions in excess of 0.080 milligrams per dry standard cubic meter, measured at 7.0% oxygen, three-run average.

B. No owner or other person shall cause or permit to be discharged into the atmosphere from any Class II unit any mercury emissions in excess of 0.080 milligrams per dry standard cubic meter, measured at 7.0% oxygen, three-run average.

9 VAC 5-40-6660. [Limit Standard] for visible emissions.

A. The provisions of Article 1 (9 VAC 5-40-60 et seq.) of 9 VAC 5 Chapter 40 (Emission Standards for Visible Emissions) apply except that the provisions in subsection B of this section apply instead of 9 VAC 5-40-80.

B. No owner or other person shall cause or permit to be discharged into the atmosphere from any small municipal waste combustion unit any visible emissions that exhibit greater than 10% opacity, measured at 30 six-minute averages.

9 VAC 5-40-6670. [No change from proposed.]

9 VAC 5-40-6680. [No change from proposed.]

9 VAC 5-40-6690. Standard for toxic pollutants.

The provisions of [~~Article 3 (9 VAC 5-40-160 et seq.) of 9 VAC 5 Chapter 40 (Emission Standards for Toxic Pollutants, Rule 4-3)~~ Article 4 (9 VAC 5-60-200 et seq.) of 9 VAC 5 Chapter 60 (Emission Standards for Toxic Pollutants, Rule 6-4)] apply.

9 VAC 5-40-6700. Operator training and certification.

A. Each chief facility operator, shift supervisor, and control room operator shall complete a training course as follows.

1. The operator training course shall be completed by the later of (i) [~~one year after the effective date of § 111(d)/129 plan approval January 31, 2004~~], (ii) six months after the municipal waste combustion unit starts up, or (iii) the date before an employee assumes responsibilities that affect operation of the municipal waste combustion unit.

2. The requirement in subdivision A 1 of this section does not apply to chief facility operators, shift supervisors, and control room operators who have obtained full certification from the American Society of Mechanical Engineers on or before [~~the effective date of § 111(d)/129 plan approval January 31, 2003~~].

3. The owner may request that the board waive the requirement in subdivision A 1 of this section for chief facility operators, shift supervisors, and control room operators who have obtained provisional certification from the American Society of Mechanical Engineers on or before [~~the effective date of § 111(d)/129 plan approval January 31, 2003~~].

B. A plant-specific training course and operating manual shall be established as follows.

1. All employees with responsibilities that affect how a municipal waste combustion unit operates, including but not limited to, chief facility operators, shift supervisors, control room operators, ash handlers, maintenance personnel, and crane or load handlers, shall complete the plant-specific training course.

2. A plant-specific operating manual shall be developed by the later of (i) six months after the municipal waste combustor unit starts up, or (ii) [~~one year after the effective date of § 111(d)/129 plan approval January 31, 2004~~].

3. A program to review the plant-specific operating manual with people whose responsibilities affect the operation of the municipal waste combustion unit shall be established. Initial review of the program shall be completed by the later of (i) [~~one year after the effective date of § 111(d)/129 plan approval January 31, 2004~~], (ii) six months after the municipal waste combustor unit starts up, or (iii) the date before an employee assumes responsibilities that affect operation of the municipal waste combustion unit.

4. The manual shall be updated and reviewed with staff annually.

5. The following information shall be included in the plant-specific operating manual.

- a. A summary of all applicable requirements in this article.
- b. A description of the basic combustion principles that apply to municipal waste combustion units.
- c. Procedures for receiving, handling, and feeding municipal solid waste.
- d. Procedures to be followed during periods of startup, shutdown, and malfunction of the municipal waste combustion unit.
- e. Procedures for maintaining a proper level of combustion air supply.
- f. Procedures for operating the municipal waste combustion unit in compliance with the requirements contained in this article.
- g. Procedures for responding to periodic upset or off-specification conditions.
- h. Procedures for minimizing carryover of particulate matter.
- i. Procedures for handling ash.
- j. Procedures for monitoring emissions from the municipal waste combustion unit.
- k. Procedures for recordkeeping and reporting.

6. The operating manual shall be maintained in an easily accessible location at the plant. It shall be available for review or inspection by all employees who are required to review it and by the board.

C. Each chief facility operator and shift supervisor shall obtain operator certification as follows.

1. Each chief facility operator and shift supervisor shall obtain and maintain one of the following:

- a. A current provisional operator certification from the American Society of Mechanical Engineers (QRO-1-1994) [~~in conjunction with the licensing requirements of the Board for Waste Management Facility Operators as required by 18 VAC 155-20~~]; or

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- b. ~~A [license from the Board for Waste Management Facility Operators as required by 18 VAC 18-20 current provisional operator certification approved by the board].~~
2. The certification and licensing required in subdivision 1 of this subsection shall be obtained by the later of the following:
- ~~For Class I units, [12 months after the effective date of § 111(d)/129 plan approval January 31, 2004]; for Class II units, [18 months after the effective date of § 111(d)/129 plan approval July 31, 2004].~~
 - Six months after the municipal waste combustion unit starts up.
 - Six months after being transferred to the municipal waste combustion unit or six months after they are hired to work at the municipal waste combustion unit.
3. Each chief facility operator and shift supervisor shall [take one of the following actions]:
- Obtain a full certification from the American Society of Mechanical Engineers [~~in conjunction with the Board for Waste Management Facility Operators as required by 18 VAC 155-20;~~] or [a certification approved by the board.]
 - Schedule a full certification exam with the American Society of Mechanical Engineers (QRO-1-1994) [~~in conjunction with the Board for Waste Management Facility Operators as required by 18 VAC 155-20; or.~~]
 - [~~Obtain a license from the Board for Waste Management Facility Operators as required by 18 VAC 155-20~~ Schedule a full certification exam to obtain a certification approval by the board].
4. The chief facility operator and shift supervisor shall obtain the full certification or be scheduled to take the certification [~~and licensing~~] exam as required in subdivision C 3 of this section by the later of the following dates.
- ~~For Class I units, [12 months after the effective date of § 111(d)/129 plan approval January 31, 2004]; for Class II units, [18 months after the effective date of § 111(d)/129 plan approval July 31, 2004].~~
 - Six months after the municipal waste combustion unit starts up.
 - Six months after they transfer to the municipal waste combustion unit or 6 months after they are hired to work at the municipal waste combustion unit.
- D. After the required date for full or provisional certification [~~and full license~~], no municipal waste combustion unit shall be operated unless one of the following employees is on duty:
- A fully certified chief facility operator.
 - A provisionally certified chief facility operator who is scheduled to take the full certification exam.
 - A fully certified shift supervisor.
 - A provisionally certified shift supervisor who is scheduled to take the full certification exam.
- E. No owner of an affected facility shall allow the facility to be operated at any time unless a person is on duty who is responsible for the proper operation of the facility and has a license from the Board for Waste Management Facility Operators in the correct classification. [No provision of this article shall relieve any owner from the responsibility to comply in all respects with the requirements of Chapter 22.1 (§ 54.1-2209 et seq.) of Title 54.1 of the Code of Virginia and with 18 VAC 155 Chapter 20.]
- F. If the certified chief facility operator and certified shift supervisor both are unavailable, a provisionally certified control room operator at the municipal waste combustion unit may fulfill the certified operator requirement. Depending on the length of time that a certified chief facility operator and certified shift supervisor are away, the owner shall meet one of the following [- :]
- When the certified chief facility operator and certified shift supervisor are both offsite for 12 hours or less and no other certified operator is onsite, the provisionally certified control room operator may perform those duties without notice to, or approval by, the board.
 - When the certified chief facility operator and certified shift supervisor are offsite for more than 12 hours, but for two weeks or less, and no other certified operator is onsite, the provisionally certified control room operator may perform those duties without notice to, or approval by, the board. The periods when the certified chief facility operator and certified shift supervisor are offsite shall be recorded and included in the annual report as specified under 9 VAC 5-40-6770 B 2 I.
 - When the certified chief facility operator and certified shift supervisor are offsite for more than two weeks, and no other certified operator is onsite, the provisionally certified control room operator may perform those duties without notice to, or approval by, the board, and the owner shall:
 - Notify the board in writing what caused the absence and what is being done to ensure that a certified chief facility operator or certified shift supervisor is onsite; and
 - Submit a status report and corrective action summary to the board every four weeks following the initial notification. If the board notifies the owner that the status report or corrective action summary is disapproved, the municipal waste combustion unit shall cease operation after 90 days. If corrective actions are taken in the 90-day period such that the board withdraws the disapproval, municipal waste combustion unit operation may continue.
- G. [The requirements of this section with regard to scheduling and obtaining certification through a program approved by the board may be met by obtaining a license from the Board for Waste Management Facility Operators.] All training and licensing shall be [conducted] in accordance with [~~§ 54.1-2242~~ Chapter 22.1 (54.1-2209 et seq.)] of [Title 54.1] of the Code of Virginia and with [~~18 VAC 155-20 (Regulations for the Virginia Board for Waste Management Facility Operators)~~ 18 VAC 155 Chapter 20].

9 VAC 5-40-6710. Compliance schedule.

A. Small municipal waste combustion units shall achieve final compliance or cease operation as expeditiously as practicable but not later than [~~December 6, 2005, or three years after the effective date of Section 111(d)/129 Plan approval, whichever is earlier~~ November 6, 2005].

B. The enforceable increments of progress shall be met as follows.

1. If a Class I unit plans to achieve compliance [~~more than one year following the effective date of § 111(d)/129 plan approval later than January 3, 2004,~~] and a permit modification is not required, or more than one year following the date of issuance of a revised construction or operation permit if a permit modification is required, the Class I unit shall:

a. Submit a final control plan no later than [~~six months after the effective date of § 111(d)/129 plan approval~~ August 6, 2003].

b. Submit a notification of retrofit contract award no later than [~~one year after the effective date of § 111(d)/129 plan approval~~ April 6, 2004].

c. Initiate onsite construction no later than [~~two years after the effective date of § 111(d)/129 plan approval~~ October 6, 2004].

d. Complete onsite construction no later than [~~30 months after the effective date of § 111(d)/129 plan approval~~ October 6, 2005].

e. Achieve final compliance no later than [~~three years after the effective date of § 111(d)/129 plan approval, or December 6, 2005, whichever is earlier~~ November 6, 2005].

2. Class I units that commenced construction after June 26, 1987, shall comply with the dioxins/furans and mercury limits specified in 9 VAC 5-40-6590 and 9 VAC 5-40-6650 no later than [~~one year following the effective date of § 111(d)/129 plan approval~~ January 31, 2004], or one year following the issuance of a revised construction or operation permit, if a permit modification is required. Final compliance shall be achieved no later than [~~December~~ November] 6, 2005 [,] even if the date one year after the issuance of a revised construction or operation permit is later than [~~December~~ November] 6, 2005.

3. If a Class II unit plans to achieve compliance [~~more than one year following the effective date of § 111(d)/129 plan approval later than January 31, 2004,~~] and a permit modification is not required, or more than one year following the date of issuance of a revised construction or operation permit if a permit modification is required, the Class II unit shall:

a. Submit a final control plan no later than [~~six months after the effective date of § 111(d)/129 plan approval~~ September 6, 2003].

b. Achieve final compliance no later than [~~three years after the effective date of § 111(d)/129 plan approval, or December 6, 2005, whichever is earlier~~ May 6, 2005].

C. The following provisions govern municipal waste combustor closure.

1. If a municipal waste combustion unit is closed but will reopen prior to the final compliance date, the increments of progress specified in subdivision B 1 of this section shall be met. If a municipal waste combustion unit is closed but will be restarted after the final compliance date, emission control retrofit shall be completed and emission limits and good combustion practices shall be met on the date the municipal waste combustion unit restarts operation.

2. If a municipal waste combustion unit will be closed rather than comply with this article, the owner shall submit a closure notification, including the date of closure, to the board by [~~the date the final control plan is due~~ August 6, 2003]. If the closure date is later than [~~one year after the effective date of § 111(d)/129 plan approval~~ January 31, 2004], the owner shall enter into a legally binding closure agreement with the board by [~~the date the final control plan is due~~ August 6, 2003]. The agreement shall specify [(i)] the date by which operation will cease [, which shall be no later than November 6, 2005, and (ii) for Class I units only, dioxin/furan emission test results as specified under 9 VAC 5-40-6740 B].

D. Notification of achievement of increments of progress shall be prepared and submitted as follows.

1. The notification shall state that the increment of progress has been achieved and shall include any items required to be submitted with the increment of progress listed in subdivision 3 of this subsection. The notification shall be signed by the owner or operator of the municipal waste combustion unit, and shall be postmarked no later than 10 days after the compliance date for the increment.

2. If an increment of progress is not met, the owner shall submit a notification to the board postmarked within 10 business days after the specified date in subsection B of this section for achieving that increment of progress. The notification shall inform the board that the increment was not met, explain why, and include a plan for meeting the increment as expeditiously as possible. Reports shall be submitted each subsequent month until the increment of progress is met.

3. Individual increments of progress shall be reported as follows.

a. For the control plan increment of progress, the owner shall submit the final control plan, including a description of the devices for air pollution control and process changes that will be used to comply with the emission limits and other requirements of this article. An onsite copy of the final control plan shall be maintained.

b. For the awarding contracts increment of progress, the owner shall submit a signed copy of the contracts awarded to initiate onsite construction, initiate onsite installation of emission control equipment, and incorporate process changes. A copy of the contracts shall be included with the notification that the increment of progress has been achieved, exclusive of documents

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incorporated by reference or attachments to the contracts.

c. For the initiating onsite construction increment of progress, the owner shall initiate onsite construction and installation of emission control equipment and initiate the process changes outlined in the final control plan.

d. For the completing onsite construction increment of progress, the owner shall complete onsite construction and installation of emission control equipment and complete process changes outlined in the final control plan.

e. For the final compliance increment of progress, the owner shall complete all process changes and complete retrofit construction as specified in the final control plan; and connect the air pollution control equipment with the municipal waste combustion unit identified in the final control plan and complete process changes to the municipal waste combustion unit so that if the affected municipal waste combustion unit is brought online, all necessary process changes and air pollution control equipment are operating as designed.

9 VAC 5-40-6720. [No change from proposed.]

9 VAC 5-40-6730. Compliance.

A. The provisions governing compliance shall be as follows:

1. With regard to the emissions standards in [~~9 VAC 5-40-6660 A,~~] 9 VAC 5-40-6670 [A], 9 VAC 5-40-6680, and 9 VAC 5-40-6690, the provisions of 9 VAC 5-40-20 (Compliance) apply.

2. With regard to the emission limits in 9 VAC 5-40-6570 through [~~9 VAC 5-40-6650 and~~] 9 VAC 5-40-6660 [~~B,~~ and 9 VAC 5-40-6670 B], the following provisions apply:

a. 9 VAC 5-40-20 B, C, D, and E [; ;]

b. 40 CFR 60.11 [; ;] and

c. Subsections B through F of this section.

B. After the date the initial [~~stack~~ emission] test and continuous emission monitoring system evaluation are required or completed, whichever is earlier, the owner shall meet the applicable emission limits specified in 9 VAC 5-40-6570 through 9 VAC 5-40-6660.

C. Initial and annual [~~stack~~ emission] tests shall be conducted to measure the emission levels of dioxins/furans, cadmium, lead, mercury, particulate matter, opacity, hydrogen chloride, and fugitive ash. The results of [~~stack~~ emission] tests for dioxins/furans, cadmium, lead, mercury, particulate matter, opacity, hydrogen chloride, and fugitive ash shall be used to demonstrate compliance with the applicable emission limits. Compliance for carbon monoxide, nitrogen oxides, and sulfur dioxide shall be demonstrated as provided in subsection E of this section.

D. The owner shall (i) install continuous emission monitoring systems for certain gaseous pollutants, (ii) operate continuous emission monitoring systems correctly, (iii) obtain the minimum amount of monitoring data, and (iv) install a continuous opacity monitoring system.

E. The owner shall use data from the continuous emission monitoring systems for sulfur dioxide, nitrogen oxides, and carbon monoxide in order to demonstrate continuous compliance with the applicable emission limits specified in 9 VAC 5-40-6610, 9 VAC 5-40-6620, and 9 VAC 5-40-6580.

F. Municipal waste combustion unit capacity shall be determined as follows.

1. For a municipal waste combustion unit that can operate continuously for 24-hour periods, the municipal waste combustion unit capacity shall be calculated based on 24 hours of operation at the maximum charge rate. The maximum charge rate shall be determined by one of the following methods.

a. For municipal waste combustion units with a design based on heat input capacity, the maximum charging rate shall be calculated based on the maximum heat input capacity and one of the following heating values:

(1) If the municipal waste combustion unit combusts refuse-derived fuel, a heating value of 12,800 kilojoules per kilogram (5,500 British thermal units per pound) shall be used; or

(2) If the municipal waste combustion unit combusts municipal solid waste, a heating value of 10,500 kilojoules per kilogram (4,500 British thermal units per pound) shall be used.

b. For municipal waste combustion units with a design not based on heat input capacity, the maximum designed charging rate shall be used.

2. Batch municipal waste combustion unit capacity shall be determined by calculating the maximum design amount of municipal solid waste that can be charged per batch multiplied by the maximum number of batches that can be processed in 24 hours. The maximum number of batches shall be calculated by dividing 24 by the number of hours needed to process one batch. Fractional batches shall be retained in the calculation; for example, if one batch requires 16 hours, the municipal waste combustion unit can combust 24/16, or 1.5 batches, in 24 hours.

9 VAC 5-40-6740. Test methods and procedures.

A. The provisions governing test methods and procedures shall be as follows:

1. With regard to the emissions standards in [~~9 VAC 5-40-6660 B,~~] 9 VAC 5-40-6670 [A], 9 VAC 5-40-6680, and 9 VAC 5-40-6690, the provisions of 9 VAC 5-40-30 (Emission testing) apply.

2. With regard to the emission limits in 9 VAC 5-40-6570 through [~~9 VAC 5-40-6650 and~~] 9 VAC 5-40-6660 [~~B~~ and 9 VAC 5-40-6670 B], the following provisions apply:

a. 9 VAC 5-40-30 D and G [; ;]

b. 40 CFR 60.8 (b) through (f) [; with the exception of paragraph (a);] and

c. Subsections B through F of this section.

B. Class I units shall submit dioxin/furan [~~stack~~ emission] test results for at least one test conducted during or after 1990. The [~~stack~~ emission] tests shall have been conducted according to the procedures specified under subsection D of this section.

C. [~~Stack~~ Emission] testing shall be conducted on the following schedule.

1. Initial [~~stack~~ emission] tests for the pollutants listed in 9 VAC 5-40-6730 C shall be conducted no later than 180 days after the final compliance date [specified in 9 VAC 5-40-6710 A].

2. Annual [~~stack~~ emission] tests for the pollutants listed in 9 VAC 5-40-6730 C shall be conducted no later than 13 months after the initial [~~stack~~ emission] test and no later than 13 months after the previous [~~stack~~ emission] test thereafter.

D. [~~Stack~~ Emission] testing shall be conducted as follows.

1. Specific testing requirements are as follows.

a. For dioxins/furans: Reference Method 1 shall be used to determine the sampling location. Reference Method 23 shall be used to measure the pollutant concentration; oxygen (or carbon dioxide) shall be measured simultaneously using Reference Method 3A or 3B. The minimum sampling time shall be four hours per test run while the municipal waste combustion unit is operating at full load.

b. For cadmium: Reference Method 1 shall be used to determine the sampling location. Reference Method 29 shall be used to measure the pollutant concentration; oxygen (or carbon dioxide) shall be measured simultaneously using Reference Method 3A or 3B. Compliance testing shall be performed while the municipal waste combustion unit is operating at full load.

c. For lead: Reference Method 1 shall be used to determine the sampling location. Reference Method 29 shall be used to measure the pollutant concentration; oxygen (or carbon dioxide) shall be measured simultaneously using Reference Method 3A or 3B. Compliance testing shall be performed while the municipal waste combustion unit is operating at full load.

d. For mercury: Reference Method 1 shall be used to determine the sampling location. Reference Method 29 shall be used to measure the pollutant concentration; oxygen (or carbon dioxide) shall be measured simultaneously using Reference Method 3A or 3B. Compliance testing shall be performed while the municipal waste combustion unit is operating at full load.

e. For opacity: Reference Method 9 shall be used to determine the sampling location, and Reference Method 9 shall be used to measure the pollutant concentration. Reference Method 9 shall be used to determine compliance with the opacity limits, using a three-hour observation period (30 six-minute averages).

f. For particulate matter: Reference Method 1 shall be used to determine the sampling location, and Reference

Method 5 or 29 shall be used to measure the pollutant concentration. The minimum sample probe volume shall be 1.0 cubic meters. The probe and filter holder heating systems in the sampling train shall be set to provide a gas temperature no greater than $160 \pm 14^{\circ}\text{C}$. The minimum sampling time is one hour.

g. For hydrogen chloride: Reference Method 1 shall be used to determine the sampling location. Reference Method 26 or 26A shall be used to measure the pollutant concentration; oxygen (or carbon dioxide) shall be measured simultaneously using Reference Method 3A or 3B. Test runs shall be at least one hour long while the municipal waste combustion unit is operating at full load.

h. For fugitive ash: No sampling location applies. Reference Method 22 (visible emissions) shall be used to measure the pollutant concentration. The three one-hour observation periods shall include periods when the facility transfers fugitive ash from the municipal waste combustion unit to the area where the fugitive ash is stored or loaded onto containers or trucks.

i. For sulfur dioxide, nitrogen oxide, and carbon monoxide, continuous emission monitoring systems shall be used. [~~Stack~~ Emission] tests are not required except for quality assurance requirements in appendix F of 40 CFR Part 60.

2. [~~Stack~~ Emission] tests for all pollutants shall consist of at least three test runs as specified in 40 CFR 60.8. The average of the pollutant emission concentrations from the three test runs shall be used to determine compliance with the applicable emission limits.

3. Oxygen (or carbon dioxide) measurements shall be obtained at the same time as the pollutant measurements to determine diluent gas levels, as specified in 9 VAC 5-40-6750 B.

4. The percent reduction in potential hydrogen chloride emission shall be calculated using the following equation:

$$\%P_{\text{HCl}} = (E_i - E_o) * (100 / E_i)$$

where:

$\%P_{\text{HCl}}$ = percent reduction of the potential hydrogen chloride emissions

E_i = hydrogen chloride emission concentration as measured at the air pollution control device inlet, corrected to 7.0% oxygen, dry basis

E_o = hydrogen chloride emission concentration as measured at the air pollution control device outlet, corrected to 7.0% oxygen, dry basis

5. The reduction efficiency for mercury emissions shall be calculated using the following equation:

$$\%P_{\text{Hg}} = (E_i - E_o) * (100 / E_i)$$

where:

$\%P_{\text{Hg}}$ = percent reduction of potential mercury emissions

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E_i = mercury emission concentration as measured at the air pollution control device inlet, corrected to 7.0% oxygen, dry basis

E_o = mercury emission concentration as measured at the air pollution control device outlet, corrected to 7.0% oxygen, dry basis

6. The owner may apply to the board for approval under 40 CFR 60.8(b) to use a reference method with minor changes in methodology, use an equivalent method, use an alternative method the results of which the board has determined are adequate for demonstrating compliance, waive the requirement for [~~a performance~~ an emission] test because the owner has demonstrated compliance by other means, or use a shorter sampling time or smaller sampling volume.

E. Alternative [~~stack emission~~] testing schedules may be established as follows.

1. A Class II unit that has conducted [~~stack emission~~] tests for dioxins/furans, cadmium, lead, mercury, particulate matter, opacity, hydrogen chloride, and fugitive ash over three consecutive years, and has demonstrated compliance with the emission limits is not required to conduct [~~a stack an emission~~] test for that pollutant for the next two years. [~~A stack An emission~~] test shall be conducted within 36 months of the anniversary date of the third consecutive [~~stack emission~~] test that shows compliance with the emission limit. Thereafter, [~~stack emission~~] tests shall be performed every third year but no later than 36 months following the previous [~~stack emission~~] tests. If [~~a stack an emission~~] test shows noncompliance with an emission limit, annual [~~stack emission~~] tests for that pollutant shall be conducted until all [~~stack emission~~] tests over three consecutive years show compliance with the emission limit for that pollutant.

2. An alternative test schedule for dioxins/furans emissions may be established if the following criteria are met: (i) the affected facility contains multiple municipal waste combustion units onsite that are subject to this article; and (ii) those municipal waste combustion units have demonstrated levels of dioxins/furans emissions less than or equal to 15 nanograms per dry standard cubic meter (total mass) for Class I units, or 30 nanograms per dry standard cubic meter (total mass) for Class II units, for two consecutive years. If these criteria are met, annual [~~stack emission~~] tests shall be conducted on only one municipal waste combustion unit per year. [~~Stack emission~~] tests conducted under the provisions of this subdivision shall be conducted as follows.

a. The annual [~~stack emission~~] test shall be conducted no more than 13 months following [~~a stack an emission~~] test on any municipal waste combustion unit subject to this article. Each year a different municipal waste combustion unit subject to this article shall be tested. All municipal waste combustion units subject to this article shall be tested in a sequence determined by the owner. Once a testing sequence has been determined it shall not be changed without approval of the board.

b. If each annual [~~stack emission~~] test shows levels of dioxins/furans emissions less than or equal to 15 nanograms per dry standard cubic meter (total mass) for Class I units, or 30 nanograms per dry standard cubic meter (total mass) for Class II units, [~~stack emission~~] tests may be conducted on only one municipal waste combustion unit subject to this article per year.

c. If any annual [~~stack emission~~] test indicates levels of dioxins/furans emissions greater than 15 nanograms per dry standard cubic meter (total mass) for Class I units, or 30 nanograms per dry standard cubic meter (total mass) for Class II units, subsequent annual [~~stack emission~~] tests shall be conducted on all municipal waste combustion units subject to this article. The owner may return to testing one municipal waste combustion unit subject to this article per year if it can demonstrate dioxins/furans emissions levels less than or equal to 15 nanograms per dry standard cubic meter (total mass) for Class I units, or 30 nanograms per dry standard cubic meter (total mass) for Class II units, for all municipal waste combustion units at a stationary source subject to this article for two consecutive years.

F. No owner of an affected facility shall deviate from the 13-month testing schedules specified in 9 VAC 5-40-6740 C and 9 VAC 5-40-6740 E 2 a without applying to the board for an alternative schedule, and the board approves the request for alternate scheduling prior to the date on which the owner would otherwise have been required to conduct the next [~~stack emission~~] test.

9 VAC 5-40-6750. Monitoring.

A. The provisions governing monitoring shall be as follows:

1. With regard to the emissions standards in [~~9 VAC 5-40-6660 A,~~] 9 VAC 5-40-6670 [A], 9 VAC 5-40-6680, and 9 VAC 5-40-6690, the provisions of 9 VAC 5-40-40 (Monitoring) apply.

2. With regard to the emission limits in 9 VAC 5-40-6570 through [~~9 VAC 5-40-6650 and~~] 9 VAC 5-40-6660 [B and 9 VAC 5-40-6670 B], the following provisions apply:

a. 9 VAC 5-40-40 A and F [~~;~~]

b. 40 CFR 60.13 [~~;~~] and

c. Subsections B through L of this section.

B. Continuous emission monitoring systems for gaseous pollutants shall be installed as follows.

1. Each affected municipal waste combustion unit shall install, calibrate, maintain, and operate continuous emission monitoring systems for oxygen (or carbon dioxide), sulfur dioxide, and carbon monoxide. Class I municipal waste combustion units shall also install, calibrate, maintain, and operate a continuous emission monitoring system for nitrogen oxides. The continuous emission monitoring systems for sulfur dioxide, nitrogen oxides, and oxygen (or carbon dioxide) shall be installed at the outlet of the air pollution control device.

2. Each continuous emission monitoring system shall be installed, evaluated, and operated according to the monitoring requirements in 40 CFR 60.13.

3. The oxygen (or carbon dioxide) concentration shall be monitored at each location where sulfur dioxide and carbon monoxide are monitored. Class I units shall also monitor the oxygen (or carbon dioxide) concentration at the location where nitrogen oxides are monitored.

4. Carbon dioxide may be monitored instead of oxygen as a diluent gas. If carbon dioxide is monitored, then an oxygen monitor is not required and the requirements in 9 VAC 5-40-6750 F shall be met.

5. If compliance is demonstrated by monitoring the percent reduction of sulfur dioxide, continuous emission monitoring systems for sulfur dioxide and oxygen (or carbon dioxide) shall be installed at the inlet of the air pollution control device.

6. If an alternative sulfur dioxide monitoring method is used, such as parametric monitoring, or if the source cannot monitor emissions at the inlet of the air pollution control device to determine percent reduction, an alternative monitoring method may be used on approval of the board under 40 CFR 60.13(i).

C. Continuous emission monitoring systems shall be operated as follows.

1. Initial, daily, quarterly, and annual evaluations of the continuous emission monitoring systems that measure oxygen (or carbon dioxide), sulfur dioxide, nitrogen oxides (Class I units only), and carbon monoxide shall be conducted.

2. The initial evaluation of the continuous emission monitoring systems shall be completed within 180 days after the final compliance date [specified in 9 VAC 5-40-6710 A].

3. For initial and annual evaluations, data shall be collected concurrently (or within 30 to 60 minutes) using the oxygen (or carbon dioxide) continuous emission monitoring system, the sulfur dioxide, nitrogen oxides, or carbon monoxide continuous emission monitoring systems, as appropriate, using the following test methods:

a. For nitrogen oxides as monitored by Class I units, the pollutant concentration levels shall be validated using Reference Method 7, 7A, 7B, 7C, 7D, or 7E; oxygen (or carbon monoxide) shall be measured using Reference Method 3 or 3A.

b. For sulfur dioxide, the pollutant concentration levels shall be validated using Reference Method 6 or 6C; oxygen (or carbon monoxide) shall be measured using Reference Method 3 or 3A.

c. For carbon monoxide, the pollutant concentration levels shall be validated using Reference Method 10, 10A, or 10B; oxygen (or carbon monoxide) shall be measured using Reference Method 3 or 3A.

4. Data shall be collected during each initial and annual evaluation of the continuous emission monitoring systems as follows.

a. For opacity: the span value shall be 100%, and Performance Specification 1 shall be used. Reference Method 9 shall be used if needed to meet minimum data requirements.

b. For nitrogen oxides as monitored by Class I units: the span value for the control device outlet shall be 125% of the maximum expected hourly potential nitrogen oxides emissions of the municipal waste combustion unit, and Performance Standard 2 shall be used. Reference Method 7E shall be used if needed to meet minimum data requirements.

c. For sulfur dioxide:

(1) For the inlet to the control device: the span value shall be 125% of the maximum expected hourly potential sulfur dioxide emissions of the municipal waste combustion unit, and Performance Standard 2 shall be used. Reference Method 6C shall be used if needed to meet minimum data requirements.

(2) For the control device outlet: the span value shall be 50% of the maximum expected hourly potential sulfur dioxide emissions of the municipal waste combustion unit, and Performance Standard 2 shall be used. Reference Method 6C shall be used if needed to meet minimum data requirements.

d. For carbon monoxide: the span value shall be 125% of the maximum expected hourly potential carbon monoxide emissions of the municipal waste combustion unit, and Performance Specification 4A shall be used. Reference Method 10 with alternative interference trap shall be used if needed to meet minimum data requirements.

e. For oxygen or carbon dioxide: the span value shall be 25% oxygen or 25% carbon dioxide, and Performance Specification 3 shall be used. Reference Method 3A or 3B shall be used if needed to meet minimum data requirements.

5. The quality assurance procedures in Procedure 1 of appendix F of 40 CFR Part 60 shall be followed for each continuous emission monitoring system.

D. The accuracy tests for the sulfur dioxide continuous emission monitoring system require evaluation of the oxygen (or carbon dioxide) continuous emission monitoring system. Therefore, the oxygen (or carbon dioxide) continuous emission monitoring system is exempt from Section 2.3 of Performance Specification 3 in appendix B of 40 CFR Part 60 (relative accuracy requirement) and Section 5.1.1 of appendix F of 40 CFR Part 60 (relative accuracy test audit).

E. The following schedule for evaluating continuous emission monitoring systems shall be met.

1. Annual evaluations of the continuous emission monitoring systems shall be conducted no more than 13 months after the previous evaluation was conducted.

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2. Continuous emission monitoring systems shall be evaluated daily and quarterly as specified in appendix F of 40 CFR Part 60.

F. The relationship between oxygen and carbon dioxide shall be established during the initial evaluation of the continuous emission monitoring systems, and may be reestablished during annual evaluations. The relationship shall be established as follows.

1. Reference Method 3A or 3B shall be used to determine oxygen concentration at the location of the carbon dioxide monitor.

2. At least three test runs for oxygen shall be conducted. Each test run shall represent a one-hour average, and sampling shall continue for at least 30 minutes in each hour.

3. The fuel-factor equation in Reference Method 3B shall be used to determine the relationship between oxygen and carbon dioxide.

G. The following monitoring data shall be collected.

1. Where continuous emission monitoring systems are required, one-hour arithmetic averages shall be obtained. The averages for sulfur dioxide, nitrogen oxides (Class I units only), and carbon monoxide shall be in parts per million by dry volume at 7.0% oxygen (or the equivalent carbon dioxide level). The one-hour averages of oxygen (or carbon dioxide) data from the continuous emission monitoring system shall be used to determine the actual oxygen (or carbon dioxide) level and to calculate emissions at 7.0% oxygen (or the equivalent carbon dioxide level).

2. At least two data points per hour shall be obtained in order to calculate a valid one-hour arithmetic average. 40 CFR 60.13(e)(2) requires the continuous emission monitoring systems to complete at least one cycle of operation (sampling, analyzing, and data recording) for each 15-minute period.

3. Valid one-hour averages shall be obtained for 75% of the operating hours per day for 90% of the operating days per calendar quarter. An operating day is any day the unit combusts any municipal solid waste or refuse-derived fuel.

4. Failure to obtain the minimum data required in subdivisions G 1 through 3 of this section constitutes a violation of the data collection requirement regardless of the emission level monitored. In such case the board shall be notified according to 9 VAC 5-40-6770 B 2 e.

5. If the minimum data required in subdivisions G 1 through 3 of this section is not obtained, the owner shall nevertheless use all valid data from the continuous emission monitoring systems in calculating emission concentrations and percent reductions in accordance with subsection H of this section.

H. One-hour arithmetic averages shall be converted into averaging times and units as follows.

1. Emissions shall be calculated at 7.0% oxygen using the following equation:

$$C_{7\%} = C_{unc} * (13.9) * (1 / (20.9 - CO_2))$$

where:

$C_{7\%}$ = concentration corrected to 7.0% oxygen.

C_{unc} = uncorrected pollutant concentration.

CO_2 = concentration of oxygen (percent).

2. Reference Method 19 shall be used to calculate the daily geometric average concentrations of sulfur dioxide emissions. Owners monitoring the percent reduction of sulfur dioxide shall use Reference Method 19 to determine the daily geometric average percent reduction of potential sulfur dioxide emissions.

3. Class I units shall use Reference Method 19 to calculate the daily arithmetic average for concentrations of nitrogen oxides.

4. Reference Method 19 shall be used to calculate the four-hour or 24-hour daily block averages (as applicable) for concentrations of carbon monoxide.

I. Operating parameters required for continuous monitoring are as follows.

1. Municipal waste combustion unit load shall be monitored as follows:

a. Municipal waste combustion units that generate steam shall install, calibrate, maintain, and operate a steam flowmeter or a feed water flowmeter as follows.

(1) The measurements of steam (or feed water) shall be continuously measured and recorded in kilograms (or pounds) per hour.

(2) The steam (or feed water) flow shall be calculated in four-hour block averages.

(3) The steam (or feed water) flow rate shall be calculated using the method in "American Society of Mechanical Engineers Power Test Codes: Test Code for Steam Generating Units, Power Test Code 4.1--1964 (R1991)," section 4 [(see 9 VAC 5-20-21)].

(4) Nozzles or orifices for flow rate measurements shall be designed, constructed, installed, calibrated, and used following the recommendations in "American Society of Mechanical Engineers Interim Supplement 19.5 on Instruments and Apparatus: Application, Part II of Fluid Meters," 6th Edition (1971), chapter 4 [(see 9 VAC 5-20-21)].

(5) Before each dioxins/furans [~~stack~~ emission] test, or at least once a year, all signal conversion elements associated with steam (or feed water) flow measurements shall be calibrated according to the manufacturer's instructions.

b. If the municipal waste combustion units do not generate steam, or if the municipal waste combustion units have shared steam systems and steam load cannot be estimated per unit, the owner shall determine, to the satisfaction of the board, one or more operating parameters that can be used to continuously estimate load level (for example, the feed rate of municipal solid

waste or refuse-derived fuel). The selected parameters shall be monitored continuously.

2. The owner shall install, calibrate, maintain, and operate a device to continuously measure the temperature of the flue gas stream at the inlet of each particulate matter control device.

3. Municipal waste combustion units that use activated carbon to control dioxins/furans or mercury emissions shall perform the following.

a. A carbon injection system operating parameter that can be used to calculate carbon feed rate (for example, screw feeder speed) shall be selected.

b. During each dioxins/furans and mercury [~~stack~~ emission] test, the average carbon feed rate in kilograms (or pounds) per hour and the average operating parameter level that correlates to the carbon feed rate shall be determined. A relationship between the operating parameter and the carbon feed rate in order to calculate the carbon feed rate based on the operating parameter level shall be established.

c. The selected operating parameter shall be continuously monitored during all periods when the municipal waste combustion unit is operating and combusting waste, and the eight-hour block average carbon feed rate shall be calculated in kilograms (or pounds) per hour, based on the selected operating parameter. When calculating the eight-hour block average, (i) hours when the municipal waste combustion unit is not operating shall be excluded, and (ii) hours when the municipal waste combustion unit is operating but the carbon feed system is not working correctly shall be included.

4. Continuous parameter monitoring systems shall meet the following requirements.

a. One-hour arithmetic averages shall be obtained for the following parameters:

- (1) Load level of the municipal waste combustion unit;
- (2) Temperature of the flue gases at the inlet of the particulate matter control device; and
- (3) Carbon feed rate if activated carbon is used to control dioxins/furans or mercury emissions.

b. In order to calculate a valid one-hour arithmetic average, at least two data points per hour shall be obtained.

c. Valid one-hour averages shall be obtained for at least 75% of the operating hours per day for 90% of the operating days per calendar quarter. An operating day is any day the unit combusts any municipal solid waste or refuse-derived fuel.

d. If the minimum data required in subdivisions 4 a through c of this subsection are not obtained, the owner is in violation of the data collection requirement, and shall notify the board according to 9 VAC 5-40-6770 B 2 e.

J. An initial evaluation of the continuous opacity monitoring system shall be completed according to Performance

Specification 1 in appendix B of 40 CFR Part 60 no later than 180 days after the final compliance date [specified in 9 VAC 5-40-6710 A]. Each annual evaluation of the continuous opacity monitoring system shall be completed no more than 13 months after the previous evaluation. Tests shall be conducted according to Reference Method 9, as specified in 9 VAC 5-40-6740 D, to determine compliance with the opacity limit in 9 VAC 5-40-6660. The data obtained from the continuous opacity monitoring system are not used to determine compliance with the opacity limit.

K. Operation of the continuous emission monitoring systems and continuous opacity monitoring system shall use the required span values and applicable performance specifications in 9 VAC 5-40-6750 C.

L. If any continuous emission monitoring systems are temporarily unavailable to meet the data collection requirements due to systems malfunction or when repairs, calibration checks, or zero and span checks prevent collection of the minimum amount of data, the alternate methods found in 9 VAC 5-40-6740 D shall be used.

9 VAC 5-40-6760. Recordkeeping.

A. The provisions governing recordkeeping shall be as follows:

1. With regard to the emissions standards in [~~9 VAC 5-40-6660 A,~~] 9 VAC 5-40-6670 [A], 9 VAC 5-40-6680, and 9 VAC 5-40-6690, the provisions of 9 VAC 5-40-50 (Notification, records and reporting) apply.

2. With regard to the emission limits in 9 VAC 5-40-6570 through [~~9 VAC 5-40-6650 and~~] 9 VAC 5-40-6660 [B and 9 VAC 5-40-6670 B], the following provisions apply:

- a. 9 VAC 5-40-50 F and H [~~;~~ ;]
- b. 40 CFR 60.7 [~~;~~ ;] and
- c. Subsections B through F of this section.

B. All records shall be kept onsite in paper copy or electronic format unless the board approves another format. All records on each municipal waste combustion unit shall be kept for at least five years, and shall be available for submittal to the board or for onsite review by an inspector.

C. The following records for operator training and certification shall be maintained.

- 1. Records of provisional certifications, including:
 - a. For the municipal waste combustion plant, names of the chief facility operator, shift supervisors, and control room operators who are provisionally certified by the American Society of Mechanical Engineers, or an equivalent board-approved certification program.
 - b. Dates of the initial provisional certifications.
 - c. Documentation showing current provisional certifications.

- 2. Records of full certifications and licenses, including:
 - a. For the municipal waste combustion plant, names of the chief facility operator, shift supervisors, and control

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- room operators who are fully certified by the American Society of Mechanical Engineers or an equivalent board-approved program.
- b. Dates of initial and renewal of full certifications and licenses.
- c. Documentation showing current full certifications and licenses.
3. Records showing completion of the operator training course, including:
- a. For the municipal waste combustion plant, names of the chief facility operator, shift supervisors, and control room operators who have completed the EPA municipal waste combustion operator training course or an equivalent board-approved program.
- b. Dates of completion of the operator training course.
- c. Documentation showing completion of the operator training course.
4. Records of reviews for plant-specific operating manuals, including:
- a. Names of persons who have reviewed the operating manual.
- b. Date of the initial review.
- c. Dates of subsequent annual reviews.
5. Records of when a certified operator is temporarily offsite, including:
- a. If the certified chief facility operator and certified shift supervisor are offsite for more than 12 hours, but for two weeks or less, and no other certified operator is onsite, the dates that the certified chief facility operator and certified shift supervisor were offsite shall be recorded.
- b. When all certified chief facility operators and certified shift supervisors are offsite for more than two weeks and no other certified operator is onsite, the following records shall be kept:
- (1) The notice that all certified persons are offsite.
 - (2) The conditions that cause those people to be offsite.
 - (3) The corrective actions being taken to ensure a certified chief facility operator or certified shift supervisor is onsite.
 - (4) Copies of the written reports submitted every four weeks that summarize the actions taken to ensure that a certified chief facility operator or certified shift supervisor will be onsite.
6. Records of calendar dates. Include the calendar date on each record.
- D. For [~~stack~~ emission] tests required under 9 VAC 5-40-6730 C, the following records shall be kept.
1. [~~Stack~~ Emission] test results for dioxins/furans, cadmium, lead, mercury, opacity, particulate matter, hydrogen chloride, and fugitive ash.
 2. Test reports, including supporting calculations that document the results of all [~~stack~~ emission] tests.
 3. The maximum demonstrated load of the municipal waste combustion units and maximum temperature at the inlet of the particulate matter control device during all [~~stack~~ emission] tests for dioxins/furans emissions.
 4. The calendar date of each record.
- E. For continuously monitored pollutants or parameters, the following records shall be maintained.
1. Records of monitoring data, including the following parameters measured using continuous monitoring systems:
 - a. All six-minute average levels of opacity.
 - b. All one-hour average concentrations of sulfur dioxide emissions.
 - c. For Class I units, all one-hour average concentrations of nitrogen oxides emissions.
 - d. All one-hour average concentrations of carbon monoxide emissions.
 - e. All one-hour average load levels of the municipal waste combustion unit.
 - f. All one-hour average flue gas temperatures at the inlet of the particulate matter control device.
 2. Records of average concentrations and percent reductions.
 - a. All 24-hour daily block geometric average concentrations of sulfur dioxide emissions or average percent reductions of sulfur dioxide emissions.
 - b. For Class I units, all 24-hour daily arithmetic average concentrations of nitrogen oxides emissions.
 - c. All four-hour block or 24-hour daily block arithmetic average concentrations of carbon monoxide emissions.
 - d. All four-hour block arithmetic average load levels of the municipal waste combustion unit.
 - e. All four-hour block arithmetic average flue gas temperatures at the inlet of the particulate matter control device.
 3. Records of exceedances, including:
 - a. Calendar dates whenever any of the pollutant or parameter levels recorded in subdivision 2 of this subsection or the opacity level recorded in subdivision 1 of this subsection did not meet the emission limits or operating levels specified in this article.
 - b. Reasons why the applicable emission limits or operating levels were exceeded.
 - c. Corrective actions taken or being taken to meet the emission limits or operating levels.
 4. Records of minimum data, including the following:
-

a. Calendar dates for which the minimum amount of data required under 9 VAC 5-40-6750 G and I 4 were not collected for the following types of pollutants and parameters:

- (1) Sulfur dioxide emissions.
- (2) For Class I units, nitrogen oxides emissions.
- (3) Carbon monoxide emissions.
- (4) Load levels of the municipal waste combustion unit.
- (5) Temperatures of the flue gases at the inlet of the particulate matter control device.

b. Reasons why the minimum data were not collected.

c. Corrective actions taken or being taken to obtain the required amount of data.

5. Records of exclusions, including documentation of each time data was excluded from the calculation of averages for any of the following pollutants or parameters and the reasons why the data were excluded:

- a. Sulfur dioxide emissions.
- b. For Class I units, nitrogen oxides emissions.
- c. Carbon monoxide emissions.
- d. Load levels of the municipal waste combustion unit.
- e. Temperatures of the flue gases at the inlet of the particulate matter control device.

6. Records of drift and accuracy, including documentation of the results of daily drift tests and quarterly accuracy determinations according to procedure 1 of appendix F of 40 CFR Part 60, for the sulfur dioxide, nitrogen oxides (Class I units only), and carbon monoxide continuous emissions monitoring systems.

7. Records of the relationship between oxygen and carbon dioxide. If carbon dioxide is monitored instead of oxygen as a diluent gas, document the relationship between oxygen and carbon dioxide, as specified in 9 VAC 5-40-6750 F.

8. Records of calendar dates shall be included on each record.

F. Municipal waste combustion units that use activated carbon to control dioxins/furans or mercury emissions shall maintain the following records.

1. Records of average carbon feed rate, including documentation of the following:

- a. Average carbon feed rate in kilograms (or pounds) per hour during all [~~stack~~ emission] tests for dioxins/furans and mercury emissions, with supporting calculations.
- b. For the operating parameter chosen to monitor carbon feed rate, average operating level during all [~~stack~~ emission] tests for dioxins/furans and mercury emissions. Supporting data that document the relationship between the operating parameter and the carbon feed rate shall be included in the records.

c. All eight-hour block average carbon feed rates in kilograms (or pounds) per hour calculated from the monitored operating parameter.

d. Total carbon purchased and delivered to the municipal waste combustion plant for each calendar quarter. If the total carbon purchased and delivered is evaluated on a municipal waste combustion unit basis, the total carbon purchased and delivered for each individual municipal waste combustion unit shall be recorded. Supporting documentation shall be included in the records.

e. Required quarterly usage of carbon for the municipal waste combustion plant. If the required quarterly usage for carbon is evaluated on a municipal waste combustion unit basis, the required quarterly usage for each municipal waste combustion unit shall be recorded. Supporting calculations shall be included in the records.

(1) The following equation shall be used for calculation on a plant basis:

$$C = \sum_{i=1}^n f_i * h_i$$

where:

C = required quarterly carbon usage for the plant in kilograms (or pounds).

f_i = required carbon feed rate for the municipal waste combustion unit in kilograms (or pounds) per hour. That is, the average carbon feed rate during the most recent mercury or dioxins/furans [~~stack~~ emission] tests (whichever has a higher feed rate).

h_i = number of hours the municipal waste combustion unit was in operation during the calendar quarter (hours).

n = number of municipal waste combustion units, i, located at the plant.

(2) The following equation shall be used for calculation on a unit basis:

$$C = f * h$$

where:

C = required quarterly carbon usage for the unit in kilograms (or pounds).

f = required carbon feed rate for the municipal waste combustion unit in kilograms (or pounds) per hour. That is, the average carbon feed rate during the most recent mercury or dioxins/furans [~~stack~~ emission] tests (whichever has a higher feed rate).

h = number of hours the municipal waste combustion unit was in operation during the calendar quarter (hours).

2. Records of low carbon feed rates, including the following:

- a. The calendar dates when the average carbon feed rate over an eight-hour block was less than the average carbon feed rates determined during the most recent

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[~~stack~~ emission] test for dioxins/furans or mercury emissions (whichever has a higher feed rate).

b. Reasons for the low carbon feed rates.

c. Corrective actions taken or being taken to meet the eight-hour average carbon feed rate requirement.

3. Records of minimum carbon feed rate data, including the following:

a. Calendar dates for which the minimum amount of carbon feed rate data required under 9 VAC 5-40-6750 I 4 were not collected.

b. Reasons why the minimum data was not collected.

c. Corrective actions taken or being taken to obtain the required amount of data.

4. Records of exclusions, including documentation of each time data were excluded from the calculation of average carbon feed rates and the reasons why.

5. Records of calendar dates, including the calendar date on each record.

9 VAC 5-40-6770. Reporting.

A. The provisions governing reporting shall be as follows:

1. With regard to the emissions standards in [~~9 VAC 5-40-6660 A,~~] 9 VAC 5-40-6670 [A], 9 VAC 5-40-6680, and 9 VAC 5-40-6690, the provisions of 9 VAC 5-40-50 (Notification, records and reporting) apply.

2. With regard to the emission limits in 9 VAC 5-40-6570 through [~~9 VAC 5-40-6650 and~~] 9 VAC 5-40-6660 [~~B~~ and 9 VAC 5-40-6670 B], the following provisions apply:

a. 9 VAC 5-40-50 F and H [~~;~~]

b. 40 CFR 60.7 [~~;~~] and

c. Subsections B and C of this section.

B. The owner of an affected facility shall submit (i) an initial report; (ii) annual reports; and (iii) semiannual reports for any emission or parameter level that does not meet the provisions of this article, as described in subdivisions B 1 through 3 of this subsection. All reports shall be submitted on paper, postmarked on or before the submittal dates in subdivisions B 1 through 3. Electronic reports may be submitted with the board's prior approval. All reports required by subdivisions B 1 a, 2, and 3 shall be maintained onsite for five years.

1. As specified in 40 CFR 60.7(c), the initial report shall be submitted no later than 180 days after the final compliance date [specified in 9 VAC 5-40-6710 A]. The initial report shall include the following:

a. The emission levels measured on the date of the initial evaluation of the continuous emission monitoring systems for all of the following pollutants or parameters as recorded in accordance with 9 VAC 5-40-6760 E 2:

(1) The 24-hour daily geometric average concentration of sulfur dioxide emissions or the 24-hour daily geometric percent reduction of sulfur dioxide emissions.

(2) For Class I units, the 24-hour daily arithmetic average concentration of nitrogen oxides emissions.

(3) The four-hour block or 24-hour daily arithmetic average concentration of carbon monoxide emissions.

(4) The four-hour block arithmetic average load level of the municipal waste combustion unit.

(5) The four-hour block arithmetic average flue gas temperature at the inlet of the particulate matter control device.

b. The results of the initial [~~stack~~ emission] tests as required by 9 VAC 5-40-6730 C and recorded in 9 VAC 5-40-6760 D.

c. The test report that documents the initial [~~stack~~ emission] tests, including supporting calculations.

d. The initial performance evaluation of the continuous emissions monitoring systems, using the applicable performance specifications in appendix B of 40 CFR Part 60 to conduct the evaluation.

e. The maximum demonstrated load of the municipal waste combustion unit and the maximum demonstrated temperature of the flue gases at the inlet of the particulate matter control device, using values established during the initial [~~stack~~ emission] test for dioxins/furans emissions, and including supporting calculations.

f. If activated carbon is used to control dioxins/furans or mercury emissions, the average carbon feed rates recorded during the initial [~~stack~~ emission] tests for dioxins/furans and mercury emissions, including supporting calculations as specified in 9 VAC 5-40-6760 F 1 a and b.

g. If carbon dioxide is monitored instead of oxygen as a diluent gas, the relationship between oxygen and carbon dioxide as specified in 9 VAC 5-40-6750 F.

2. The annual report shall be submitted no later than February 1 of each year that follows the calendar year in which the data is collected. If the facility has a federal operating permit for any unit, the permit may require submittal of semiannual reports. The annual report shall summarize data collected for all pollutants and parameters regulated under this article, and shall include:

a. The results of the annual [~~stack~~ emission] test as required by 9 VAC 5-40-6730 C and as recorded under 9 VAC 5-40-6760 D 1.

b. A list of the highest average levels recorded, in the appropriate units, for the following pollutants and parameters:

(1) Sulfur dioxide emissions.

(2) For Class I units, nitrogen oxides emissions.

(3) Carbon monoxide emissions.

(4) Load level of the municipal waste combustion unit.

(5) Temperature of the flue gases at the inlet of the particulate matter air pollution control device (four-hour block average).

c. The highest six-minute opacity level measured. The value shall be based on all six-minute average opacity levels recorded by the continuous opacity monitoring system as required by 9 VAC 5-40-6760 E 1 a.

d. For municipal waste combustion units that use activated carbon for controlling dioxins/furans or mercury emissions, the following records shall be included:

(1) The average carbon feed rates recorded during the most recent dioxins/furans and mercury [~~stack~~ emission] tests.

(2) The lowest eight-hour block average carbon feed rate recorded during the year.

(3) The total carbon purchased and delivered to the municipal waste combustion plant for each calendar quarter. If the total carbon purchased and delivered is evaluated on a municipal waste combustion unit basis, the total carbon purchased and delivered for each individual municipal waste combustion unit shall be recorded.

(4) The required quarterly carbon usage of the municipal waste combustion plant calculated using the equations in 9 VAC 5-40-6760 F 1 e (1) and (2). If the required quarterly usage for carbon is evaluated on a municipal waste combustion unit basis, the required quarterly usage for each municipal waste combustion unit shall be recorded.

e. The total number of days the minimum number of hours of data for the following pollutants or parameters were not obtained, including the reasons why data were not obtained and corrective actions taken to obtain the data in the future:

(1) Sulfur dioxide emissions.

(2) For Class I units, nitrogen oxides emissions.

(3) Carbon monoxide emissions.

(4) Load level of the municipal waste combustion unit.

(5) Temperature of the flue gases at the inlet of the particulate matter air pollution control device.

(6) Carbon feed rate.

f. The number of hours data have been excluded from the calculation of average levels (include the reasons for excluding it), for the following pollutants and parameters:

(1) Sulfur dioxide emissions.

(2) For Class I units, nitrogen oxides emissions.

(3) Carbon monoxide emissions.

(4) Load level of the municipal waste combustion unit.

(5) Temperature of the flue gases at the inlet of the particulate matter air pollution control device.

(6) Carbon feed rate.

g. A notice of intent to begin a reduced [~~stack~~ emission] testing schedule for dioxins/furans emissions during the following calendar year if the facility is eligible for alternative scheduling as provided in 9 VAC 5-40-6740 E 1 or 2.

h. A notice of intent to begin a reduced [~~stack~~ emission] testing schedule for other pollutants during the following calendar year if the facility is eligible for alternative scheduling as provided in 9 VAC 5-40-6740 E 1.

i. A summary of any emission or parameter level that did not meet the limits specified in this article.

j. A summary of the data in subdivisions B 2 a through d of this section from the year preceding the reporting year, which gives the board a summary of the performance of the municipal waste combustion unit over a two-year period.

k. If carbon dioxide is monitored instead of oxygen as a diluent gas, documentation of the relationship between oxygen and carbon dioxide, as specified in 9 VAC 5-40-6750 F.

l. Documentation of periods when all certified chief facility operators and certified shift supervisors are offsite for more than 12 hours.

3. A semiannual report on any recorded emission or parameter level that does not meet the requirements specified in this article shall be submitted. For data collected during the first half of a calendar year, the report shall be submitted by August 1 of that year. For data collected during the second half of the calendar year, the report shall be submitted by February 1 of the following year. The following information shall be included:

a. For any of the following pollutants and parameters that exceeded the limits specified in this article, the calendar date they exceeded the limits, the averaged and recorded data for that date, the reasons for exceeding the limits, and corrective actions taken:

(1) Concentration or percent reduction of sulfur dioxide emissions.

(2) For Class I units, concentration of nitrogen oxides emissions.

(3) Concentration of carbon monoxide emissions.

(4) Load level of the municipal waste combustion unit.

(5) Temperature of the flue gases at the inlet of the particulate matter air pollution control device.

(6) Average six-minute opacity level. The data obtained from the continuous opacity monitoring system are not used to determine compliance with the limit on opacity emissions.

b. If the results of the annual [~~stack~~ emission] tests (as recorded in 9 VAC 5-40-6760 D 1) show emissions above the limits for dioxins/furans, cadmium, lead, mercury, particulate matter, opacity, hydrogen chloride, and fugitive

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ash, a copy of the test report that documents the emission levels and corrective actions taken shall be included.

c. Municipal waste combustion units that apply activated carbon to control dioxins/furans or mercury emissions shall include the following.

(1) Documentation of all dates when the eight-hour block average carbon feed rate (calculated from the carbon injection system operating parameter) is less than the highest carbon feed rate established during the most recent mercury and dioxins/furans [~~stack~~ emission] test, as specified in 9 VAC 5-40-6760 F 1 a, including (i) eight-hour average carbon feed rate, (ii) reasons for occurrences of low carbon feed rates, (iii) corrective actions taken to meet the carbon feed rate requirement, and (iv) the calendar date.

(2) Documentation of each quarter when total carbon purchased and delivered to the municipal waste combustion plant is less than the total required quarterly usage of carbon. If the total carbon purchased and delivered is evaluated on a municipal waste combustion unit basis, the total carbon purchased and delivered for each individual municipal waste combustion unit shall be recorded. The following information shall be included: (i) amount of carbon purchased and delivered to the plant, (ii) required quarterly usage of carbon, (iii) reasons for not meeting the required quarterly usage of carbon, (iv) corrective actions taken to meet the required quarterly usage of carbon, and [~~(iv)~~ (v)] the calendar date.

C. Changes to semiannual or annual reporting dates may be pursued in accordance with the procedures of 40 CFR 60.19(c), and with the approval of the board.

9 VAC 5-40-6780. Requirements for air curtain incinerators that burn 100% yard waste.

A. The owner of an air curtain incinerator subject to the provisions of this article shall meet the following opacity requirements no later than 180 days after the final compliance date [specified in 9 VAC 5-40-6710 A].

1. The opacity limit is 10% (six-minute average) for air curtain incinerators that can combust at least 35 tons per day of municipal solid waste and no more than 250 tons per day of municipal solid waste.

2. The opacity limit is 35% (six-minute average) during the startup period that is within the first 30 minutes of operation.

3. Except during malfunctions, the requirements of this article apply at all times. Each malfunction shall not exceed three hours.

4. Compliance with the opacity limit shall be achieved as follows.

a. Reference Method 9 shall be used to determine compliance with the opacity limit.

b. An initial test for opacity as specified in 40 CFR 60.8 shall be conducted [no later than 180 days after the final compliance date specified in 9 VAC 5-40-6710 A].

c. After the initial test for opacity, annual tests shall be conducted no more than 13 calendar months following the date of the previous test.

B. The owner of an air curtain incinerator subject to the provisions of this article shall meet the following recordkeeping and reporting requirements.

1. A notice of construction shall be provided that includes the following:

a. The intent to construct the air curtain incinerator.

b. The planned initial startup date.

c. Types of fuels planned to combust.

d. Incinerator capacity, including supporting capacity calculations, as specified in 9 VAC 5-40-6730 F.

2. Records of results of all opacity tests shall be maintained onsite in either paper copy or electronic format unless the board approves another format.

3. All records for each incinerator shall be maintained for at least five years.

4. All records shall be available to the board or for onsite review by an inspector.

5. The results (each six-minute average) of the opacity tests shall be submitted no later than February 1 of the year following the year of the opacity emission test.

6. Reports shall be submitted as a paper copy on or before the applicable submittal date. Reports may be submitted on electronic media with prior approval of the board.

7. Annual reporting dates may be revised with the prior approval of the board (see 40 CFR 60.19(c)).

8. All reports shall be maintained onsite for a period of five years.

9 VAC 5-40-6790. [No change from proposed.]

9 VAC 5-40-6800. [No change from proposed.]

9 VAC 5-40-6810. [No change from proposed.]

Article 45 [~~51~~ 53].

Emission Standards for Lithographic Printing Processes (Rule 4-45 [~~51~~ 53]).

Article 46 [~~52~~ 54].

[Emission] Standards [~~of Performance~~] for Municipal Waste Combustors (Rule 4-46 [~~52~~ 54]).

VA.R. Doc. No. R01-112; Filed July 22, 2003; 4:30 p.m.



DEPARTMENT OF MEDICAL ASSISTANCE
SERVICES

TITLE 12. HEALTH

STATE BOARD OF HEALTH

REGISTRAR'S NOTICE: The following regulatory action is exempt from the Administrative Process Act in accordance with § 2.2-4006 A 4 c of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations provided such regulations do not differ materially from those required by federal law or regulation. The Department of Health will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Due to its length, 12 VAC 5-590 filed by the State Board of Health is not being published. However, in accordance with § 2.2-4031 of the Code of Virginia, the summary is being published in lieu of the full text. The full text of the regulation is available for public inspection at the office of the Registrar of Regulations and at the Department of Health (see contact information below) and is accessible on the Virginia Register of Regulations website at <http://register.state.va.us/codecomm/register/vol19/welcome.htm>.

Title of Regulation: 12 VAC 5-590. **Waterworks Regulations (amending 12 VAC 5-590-140, 12 VAC 5-590-150, 12 VAC 5-590-370, 12 VAC 5-590-380, 12 VAC 5-590-400, 12 VAC 5-590-410, 12 VAC 5-590-440, 12 VAC 5-590-530, 12 VAC 5-590-540, and Appendices B and O; adding Appendix P; repealing Appendices F and H).**

Statutory Authority: §§ 32.1-12 and 32.1-170 of the Code of Virginia.

Effective Date: September 10, 2003.

Agency Contact: Elizabeth Crocker, Department of Health, 1500 E. Main St., Room 109, Richmond, VA 23219, telephone (804) 371-2885.

Summary:

The amendments replace the current public notification requirements promulgated by the federal government and adopted by Virginia in the 1980s with requirements that better tailor the form, manner, and timing of the notices to the relative risk to health. The amendments are intended to make notifications easier and more effective for both waterworks owners and the customers they serve. The amendments are necessary to conform Virginia's regulations to changes made to the National Primary Drinking Water Regulations found at 40 CFR Part 141, dated July 1, 2002.

The amendments also promote consistent implementation of the Waterworks Regulations concerning the control of radionuclides in drinking water. The amendments are necessary to conform Virginia's regulations to changes made to the National Primary Drinking Water Regulations for Radionuclides found at 40 CFR Parts 141 and 142, dated December 7, 2000.

VA.R. Doc. No. R03-289; Filed July 15, 2003, 10:33 a.m.

REGISTRAR'S NOTICE: The following regulatory action is exempt from the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The Department of Medical Assistance Services will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 12 VAC 30-140. **Virginia Children's Medical Security Insurance Programs (repealing 12 VAC 30-140-10 through 12 VAC 30-140-570).**

Statutory Authority: §§ 32.1-324 and 32.1-325 of the Code of Virginia.

Effective Date: September 11, 2003.

Summary:

This action repeals the regulations for the Virginia Children's Medical Security Insurance Program. The 2000 General Assembly, in Chapters 824 and 848, repealed the statutory basis for this program by converting it to the Family Access to Medical Insurance Security program.

Agency Contact: Linda Nablo, Director, Division of Child Health Services, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 225-4212, FAX (804) 786-1680 or e-mail lnablo@dmas.state.va.us.

VA.R. Doc. No. R03-295; Filed July 15, 2003, 11:19 a.m.

STATE MENTAL HEALTH, MENTAL RETARDATION
AND SUBSTANCE ABUSE SERVICES BOARD

Title of Regulation: 12 VAC 35-105. **Rules and Regulations for the Licensing of Providers of Mental Health, Mental Retardation and Substance Abuse Services (amending 12 VAC 35-105-20, 12 VAC 35-105-30, 12 VAC 35-105-280, 12 VAC 35-105-590, 12 VAC 35-105-660 and 12 VAC 35-105-800).**

Statutory Authority: §§ 37.1-10, 37.1-179.1, and 37.1-182 of the Code of Virginia.

Effective Date: September 18, 2003.

Agency Contact: Leslie Anderson, Director of Licensing, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 371-6885, FAX (804) 692-0066, or e-mail landerson@dmhmrsas.state.va.us.

Summary:

These amendments incorporate provisions to licensed providers of day support, crisis stabilization, and in-home support services funded through the Individual and Family Developmental Disabilities Support (IFDDS) Waiver. Licensing of these services is necessary to receive Medicaid IFDDS funding. These amendments primarily add

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terminology and a few additional requirements applicable to these newly covered services.

12 VAC 35-105-20. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Abuse" (§ 37.1-1 of the Code of Virginia) means any act or failure to act, by an employee or other person responsible for the care of an individual receiving services that was performed or was failed to be performed knowingly, recklessly, or intentionally, and that caused or might have caused physical or psychological harm, injury, or death to an individual receiving services. Examples of abuse include, but are not limited to, the following:

1. Rape, sexual assault, or other criminal sexual behavior;
2. Assault or battery;
3. Use of language that demeans, threatens, intimidates or humiliates the person;
4. Misuse or misappropriation of the person's assets, goods or property;
5. Use of excessive force when placing a person in physical or mechanical restraint;
6. Use of physical or mechanical restraints on a person that is not in compliance with federal and state laws, regulations, and policies, professional accepted standards of practice or the person's individual service plan;
7. Use of more restrictive or intensive services or denial of services to punish the person or that is not consistent with his individual service plan.

"Admission" means the process of acceptance into a service that includes orientation to service goals, rules and requirements, and assignment to appropriate employees.

"Behavior management" means those principles and methods employed by a provider to help an individual receiving services to achieve a positive outcome and to address and correct inappropriate behavior in a constructive and safe manner. Behavior management principles and methods must be employed in accordance with the individualized service plan and written policies and procedures governing service expectations, treatment goals, safety and security.

"Behavioral [treatment] or positive behavior support [treatment] program" means any set of documented procedures that are an integral part of the interdisciplinary treatment plan and are developed on the basis of a systemic data collection such as a functional assessment for the purpose of assisting an individual receiving services to achieve any or all of the following: (i) improved behavioral functioning and effectiveness; (ii) alleviation of the symptoms of psychopathology; or (iii) reduction of serious behaviors. A behavioral treatment program can also be referred to as a behavioral treatment plan or behavioral support plan.

"Care" or "treatment" means a set of individually planned interventions, training, habilitation, or supports that help an individual obtain or maintain an optimal level of functioning,

reduce the effects of disability or discomfort, or ameliorate symptoms, undesirable changes or conditions specific to physical, mental, behavioral, *cognitive*, or social functioning.

"Case management service" means assisting individuals and their families to access services and supports that are essential to meeting their basic needs identified in their individualized service plan, which include not only accessing needed mental health, mental retardation and substance abuse services, but also any medical, nutritional, social, educational, vocational and employment, housing, economic assistance, transportation, leisure and recreational, legal, and advocacy services and supports that the individual needs to function in a community setting. Maintaining waiting lists for services, case management tracking and periodically contacting individuals for the purpose of determining the potential need for services shall be considered screening and referral and not admission into licensed case management.

"Clubhouse service" means the provision of recovery-oriented psychosocial rehabilitation services in a nonresidential setting on a regular basis not less than two hours per day, five days per week, in which clubhouse members and employees work together in the development and implementation of structured activities involved in the day-to-day operation of the clubhouse facilities and in other social and employment opportunities through skills training, peer support, vocational rehabilitation, and community resource development. [~~Clubhouse services provided under the Individual and Family Developmental Disabilities Support (IFDDS) Waiver are provided not less than three days per week.~~]

"Commissioner" means the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services or his authorized agent.

"Community gero-psychiatric residential services" means 24-hour nonacute care in conjunction with treatment in a setting that provides less intensive services than a hospital, but more intensive mental health services than a nursing home or group home. Individuals with mental illness, behavioral problems, and concomitant health problems (usually age 65 and older), appropriately treated in a geriatric setting, are provided intense supervision, psychiatric care, behavioral treatment planning, nursing, and other health related services. An Interdisciplinary Services Team assesses the individual and develops the services plan.

"Community intermediate care facility/mental retardation (ICF/MR)" means a service licensed by the Department of Mental Health, Mental Retardation, and Substance Abuse Services in which care is provided to individuals who have mental retardation who are not in need of nursing care, but who need more intensive training and supervision than may be available in an assisted living facility or group home. Such facilities must comply with Title XIX of the Social Security Act standards, provide health or rehabilitative services, and provide active treatment to individuals receiving services toward the achievement of a more independent level of functioning or an improved quality of life.

"Complaint" means an allegation brought to the attention of the department that a licensed provider violated these regulations.

~~"Consumer service plan [CSP]" [or "CSP]" means [comprehensive and regularly updated written plan of action to meet the needs and preferences of an individual with a developmental disability or other related conditions. This plan is developed by the support coordinator for an individual served through the IFDDS Waiver that document addressing all needs of recipients of home and community-based care developmental disability services (IFDDS Waiver), in all life areas. Supporting documentation developed by service providers is to be incorporated in the CSP by the support coordinator. Factors to be considered when these plans are developed may include, but are not limited to, recipient ages, level of functioning, and preferences].~~

"Corrective action plan" means the provider's pledged corrective action in response to noncompliances documented by the regulatory authority. A corrective action plan must be completed within a specified time.

"Correctional facility" means a facility operated under the management and control of the Virginia Department of Corrections.

"Corporal punishment" means punishment administered through the intentional inflicting of pain or discomfort to the body (i) through actions such as, but not limited to, striking or hitting with any part of the body or with an implement; (ii) through pinching, pulling or shaking; or (iii) through any similar action that normally inflicts pain or discomfort.

"Crisis" means a situation in which an individual presents an immediate danger to self or others or is at risk of serious mental or physical health deterioration.

"Crisis stabilization" means direct, intensive intervention to individuals who are experiencing serious psychiatric or behavioral problems, or both, that jeopardize their current community living situation. This service shall include temporary intensive services and supports that avert emergency psychiatric hospitalization or institutional placement or prevent out-of-home placement. This service shall be designed to stabilize recipients and strengthen the current living situations so that individuals can be maintained in the community during and beyond the crisis period.

"Day support service" means the provision of individualized planned activities, supports, training, supervision, and transportation to individuals with mental retardation [~~or developmental disabilities~~] or related conditions to improve functioning or maintain an optimal level of functioning. Services may enhance the following skills: self-care and hygiene, eating, toileting, task learning, community resource utilization, environmental and behavioral skills, social, medication management, and transportation. Services provide opportunities for peer interaction and community integration. Services may be provided in a facility (center based) or provided out in the community (noncenter based). Services are provided for two or more consecutive hours per day. The term "day support service" does not include services in which the primary function is to provide extended sheltered or competitive employment, supported or transitional employment services, general education services, general recreational services, or outpatient services licensed pursuant to this chapter.

"Day treatment services" means the provision of coordinated, intensive, comprehensive, and multidisciplinary treatment to individuals through a combination of diagnostic, medical, psychiatric, case management, psychosocial rehabilitation, prevocational and educational services. Services are provided for two or more consecutive hours per day.

"Department" means the Virginia Department of Mental Health, Mental Retardation and Substance Abuse Services.

~~["Developmental disabilities and related conditions" means autism or a severe, chronic disability that meets all of the following conditions identified in 42 CFR 435.1009:~~

~~1. It is attributable to cerebral palsy, epilepsy or any other condition, other than mental illness, that is found to be closely related to mental retardation because this condition results in impairment of general intellectual functioning or adaptive behavior similar to behavior of persons with mental retardation, and requires treatment or services similar to those required for these persons.~~

~~2. It is manifested before the person reaches age 22.~~

~~3. It is likely to continue indefinitely.~~

~~4. It results in substantial functional limitations in three or more of the following areas of major life activity:~~

~~a. Self-care;~~

~~b. Understanding and use of language;~~

~~c. Learning;~~

~~d. Mobility;~~

~~e. Self-direction; or~~

~~f. Capacity for independent living.]~~

"Discharge" means the process by which the individual's active involvement with a provider is terminated by the provider.

"Discharge plan" means the written plan that establishes the criteria for an individual's discharge from a service and coordinates planning for aftercare services.

"Dispense" means to deliver a drug to an ultimate user by or pursuant to the lawful order of a practitioner, including the prescribing and administering, packaging, labeling or compounding necessary to prepare the substance for that delivery. (§ 54.1-3400 et seq. of the Code of Virginia.)

"Emergency service" means mental health, mental retardation or substance abuse services available 24 hours a day and seven days per week that provide crisis intervention, stabilization, and referral assistance over the telephone or face-to-face for individuals seeking services for themselves or others. Emergency services may include walk-ins, home visits, jail interventions, pre-admission screenings, and other activities designed to stabilize an individual within the setting most appropriate to the individual's current condition.

"Group home residential service" means a congregate residential service providing 24-hour supervision in a community-based, home-like dwelling. These services are provided for individuals needing assistance, counseling, and

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training in activities of daily living or whose service plan identifies the need for the specific type of supervision or counseling available in this setting.

"Home and noncenter based" means that a service is provided in the home or other noncenter-based setting. This includes but is not limited to noncenter-based day support, supportive in-home, and intensive in-home services.

"IFDDS Waiver" means the *Individual and Family Developmental Disabilities Support Waiver*.

"Individual" or *"individual receiving services"* means a person receiving care or treatment or other services from a provider licensed under this chapter whether that person is referred to as a patient, client, resident, student, individual, recipient, family member, relative, or other term. When the term is used, the requirement applies to every individual receiving services of the provider.

"Individualized services plan" or *"ISP"* means a comprehensive and regularly updated written plan of action to meet the needs and preferences of an individual.

"Inpatient psychiatric service" means a 24-hour intensive medical, nursing care and treatment provided for individuals with mental illness or problems with substance abuse in a hospital as defined in § 32.1-123 of the Code of Virginia or in a special unit of such a hospital.

"Instrumental activities of daily living [(ADL) (IADL)]" means *social tasks (e.g., meal preparation, shopping, housekeeping, laundry, and money management)*. *An individual's degree of independence in performing these activities is part of determining appropriate level of care and services.*

"Intensive Community Treatment (ICT) service" means a self-contained interdisciplinary team of at least five full-time equivalent clinical staff, a program assistant, and a full-time psychiatrist that:

1. Assumes responsibility for directly providing needed treatment, rehabilitation, and support services to identified individuals with severe and persistent mental illnesses;
2. Minimally refers individuals to outside service providers;
3. Provides services on a long-term care basis with continuity of caregivers over time;
4. Delivers 75% or more of the services outside program offices; and
5. Emphasizes outreach, relationship building, and individualization of services.

The individuals to be served by ICT are individuals who have severe symptoms and impairments not effectively remedied by available treatments or who, because of reasons related to their mental illness, resist or avoid involvement with mental health services.

"Intensive in-home service" means family preservation interventions for children and adolescents who have or are at-risk of serious emotional disturbance, including such individuals who also have a diagnosis of mental retardation. Services are usually time limited provided typically in the residence of an individual who is at risk of being moved to

out-of-home placement or who is being transitioned back home from an out-of-home placement. These services include crisis treatment; individual and family counseling; life, parenting, and communication skills; case management activities and coordination with other services; and emergency response.

"Intensive outpatient service" means treatment provided in a concentrated manner (involving multiple outpatient visits per week) over a period of time for individuals requiring stabilization. These services usually include multiple group therapy sessions during the week, individual and family therapy, individual monitoring, and case management.

"Investigation" means a detailed inquiry or systematic examination of the operations of a provider or its services regarding a violation of regulations or law. An investigation may be undertaken as a result of a complaint, an incident report or other information that comes to the attention of the department.

"Legally authorized representative" means a person permitted by law to give informed consent for disclosure of information and give informed consent to treatment, including medical treatment, and participation in human research for an individual who lacks the mental capacity to make these decisions.

"Licensed mental health professional (LMHP)" means a physician, licensed clinical psychologist, licensed professional counselor, licensed clinical social worker, licensed substance abuse treatment practitioner, or certification as a psychiatric clinical nurse specialist.

"Location" means a place where services are or could be provided.

"Medical detoxification" means a service provided in a hospital or other 24-hour care facility, under the supervision of medical personnel using medication to systematically eliminate or reduce effects of alcohol or other drugs in the body.

"Medical evaluation" means the process of assessing an individual's health status that includes a medical history and a physical examination of an individual conducted by a licensed medical practitioner operating within the scope of his license.

"Medication" means prescribed or over-the-counter drugs or both.

"Medication administration" means the direct application of medications by injection, inhalation, or ingestion or any other means to an individual receiving services by (i) persons legally permitted to administer medications or (ii) the individual at the direction and in the presence of persons legally permitted to administer medications.

"Medication error" means that an error has been made in administering a medication to an individual when any of the following occur: (i) the wrong medication is given to an individual, (ii) the wrong individual is given the medication, (iii) the wrong dosage is given to an individual, (iv) medication is given to an individual at the wrong time or not at all, or (v) the proper method is not used to give the medication to the individual.

"Medication storage" means any area where medications are maintained by the provider, including a locked cabinet, locked room, or locked box.

"Mental Health Community Support Service (MHCSS)" means the provision of recovery-oriented psychosocial rehabilitation services to individuals with long-term, severe psychiatric disabilities including skills training and assistance in accessing and effectively utilizing services and supports that are essential to meeting the needs identified in their individualized service plan and development of environmental supports necessary to sustain active community living as independently as possible. MHCSS Services are provided in any setting in which the individual's needs can be addressed, skills training applied, and recovery experienced.

"Mental retardation" means substantial subaverage general intellectual functioning that originates during the development period and is associated with impairment in adaptive behavior. It exists concurrently with related limitations in two or more of the following applicable adaptive skill areas: communication, self-care, home living, social skills, community use, self-direction, health and safety, functional academics, leisure, and work.

"Mentally ill" means any person afflicted with mental disease to such an extent that for his own welfare or the welfare of others he requires care and treatment, or with mental disorder or functioning classifiable under the diagnostic criteria from the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association, Fourth Edition, 1994, that affects the well-being or behavior of an individual.

"Neglect" means the failure by an individual or provider responsible for providing services to provide nourishment, treatment, care, goods, or services necessary to the health, safety or welfare of a person receiving care or treatment for mental illness, mental retardation or substance abuse (§ 37.1-1 of the Code of Virginia). *This definition of neglect also applies to individuals receiving in-home support, crisis stabilization, and day support under the IFDDS Waiver.*

"Opioid treatment service" means an intervention strategy that combines treatment with the administering or dispensing of opioid agonist treatment medication. An individual-specific, physician-ordered dose of medication is administered or dispensed either for detoxification or maintenance treatment.

"Outpatient service" means a variety of treatment interventions generally provided to individuals, groups or families on an hourly schedule in a clinic or similar facility or in another location. Outpatient services include, but are not limited to, emergency services, crisis intervention services, diagnosis and evaluation, intake and screening, counseling, psychotherapy, behavior management, psychological testing and assessment, chemotherapy and medication management services, and jail based services. "Outpatient service" specifically includes:

1. Services operated by a community services board established pursuant to Chapter 10 (§ 37.1-194 et seq.) of Title 37.1 of the Code of Virginia;
2. Services funded wholly or in part, directly or indirectly, by a community services board established pursuant to

Chapter 10 (§ 37.1-194 et seq.) of Title 37.1 of the Code of Virginia; or

3. Services that are owned, operated, or controlled by a corporation organized pursuant to the provisions of either Chapter 9 (§ 13.1-601 et seq.) or Chapter 10 (§ 13.1-801 et seq.) of Title 13.1 of the Code of Virginia.

"Partial hospitalization service" means the provision within a medically supervised setting of day treatment services that are time-limited active treatment interventions, more intensive than outpatient services, designed to stabilize and ameliorate acute symptoms, and serve as an alternative to inpatient hospitalization or to reduce the length of a hospital stay.

"Program of Assertive Community Treatment (PACT) service" means a self-contained interdisciplinary team of at least 10 full-time equivalent clinical staff, a program assistant, and a full- or part-time psychiatrist that:

1. Assumes responsibility for directly providing needed treatment, rehabilitation, and support services to identified individuals with severe and persistent mental illnesses;
2. Minimally refers individuals to outside service providers;
3. Provides services on a long-term care basis with continuity of caregivers over time;
4. Delivers 75% or more of the services outside program offices; and
5. Emphasizes outreach, relationship building, and individualization of services.

The individuals to be served by PACT are individuals who have severe symptoms and impairments not effectively remedied by available treatments or who, because of reasons related to their mental illness, resist or avoid involvement with mental health services.

"Provider" means any person, entity or organization, excluding an agency of the federal government by whatever name or designation, that provides services to individuals with mental illness, mental retardation or substance addiction or abuse including the detoxification, treatment or rehabilitation of drug addicts through the use of the controlled drug methadone or other opioid replacements or provides in-home support, crisis stabilization, or day support under the IFDDS Waiver. Such person, entity or organization shall include a hospital as defined in § 32.1-123 of the Code of Virginia, community services board as defined in § 37.1-194.1 of the Code of Virginia, behavioral health authority as defined in § 37.1-243 of the Code of Virginia, private provider, and any other similar or related person, entity or organization. It shall not include any individual practitioner who holds a license issued by a health regulatory board of the Department of Health Professions or who is exempt from licensing pursuant to §§ 54.1-2901, 54.1-3001, 54.1-3501, 54.1-3601 and 54.1-3701 of the Code of Virginia. It does not include any person providing uncompensated services to a family member.

"Psychosocial rehabilitation service" means care or treatment for individuals with long-term, severe psychiatric disabilities, which is designed to improve their quality of life by assisting

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them to assume responsibility over their lives and to function as actively and independently in society as possible, through the strengthening of individual skills and the development of environmental supports necessary to sustain community living. Psychosocial rehabilitation includes skills training, peer support, vocational rehabilitation, and community resource development oriented toward empowerment, recovery, and competency.

"Qualified Developmental Disabilities Professional (QDDP)" means an individual possessing at least one year of documented experience working directly with individuals who have [~~developmental disabilities or~~] related conditions and is one of the following: a doctor of medicine or osteopathy, a registered nurse, or an individual holding at least a bachelor's degree in a human service field including, but not limited to, sociology, social work, special education, rehabilitation counseling, or psychology.

"Qualified Mental Health Professional (QMHP)" means a clinician in the health professions who is trained and experienced in providing psychiatric or mental health services to individuals who have a psychiatric diagnosis; including a (i) physician: a doctor of medicine or osteopathy; (ii) psychiatrist: a doctor of medicine or osteopathy, specializing in psychiatry and licensed in Virginia; (iii) psychologist: an individual with a master's degree in psychology from a college or university with at least one year of clinical experience; (iv) social worker: an individual with at least a bachelor's degree in human services or related field (social work, psychology, psychiatric rehabilitation, sociology, counseling, vocational rehabilitation, human services counseling or other degree deemed equivalent to those described) from an accredited college and with at least one year of clinical experience providing direct services to persons with a diagnosis of mental illness; (v) Registered Psychiatric Rehabilitation Provider (RPRP) registered with the International Association of Psychosocial Rehabilitation Services (IAPRS); (vi) registered nurse licensed in the Commonwealth of Virginia with at least one year of clinical experience; or (vii) any other licensed mental health professional.

"Qualified Mental Retardation Professional (QMRP)" means an individual possessing at least one year of documented experience working directly with individuals who have mental retardation or other developmental disabilities and is one of the following: a doctor of medicine or osteopathy, a registered nurse, or holds at least a bachelor's degree in a human services field including, but not limited to, sociology, social work, special education, rehabilitation counseling, and psychology.

"Qualified Paraprofessional in Mental Health (QPPMH)" means an individual who must, at a minimum, meet one of the following criteria: (i) registered with the International Association of Psychosocial Rehabilitation Services (IAPRS) as an Associate Psychiatric Rehabilitation Provider (APRP); (ii) an Associate's Degree in a related field (social work, psychology, psychiatric rehabilitation, sociology, counseling, vocational rehabilitation, human services counseling) and at least one year of experience providing direct services to persons with a diagnosis of mental illness; or (iii) a minimum of 90 hours classroom training and 12 weeks of experience

under the direct personal supervision of a QMHP providing services to persons with mental illness and at least one year of experience (including the 12 weeks of supervised experience).

"Referral" means the process of directing an applicant or an individual to a provider or service that is designed to provide the assistance needed.

[*"Related conditions" means autism or a severe, chronic disability that meets all of the following conditions identified in 42 CFR 435.1009:*

1. *Attributable to cerebral palsy, epilepsy or any other condition, other than mental illness, that is found to be closely related to mental retardation because this condition results in impairment of general intellectual functioning or adaptive behavior similar to behavior of persons with mental retardation, and requires treatment or services similar to those required for these persons;*
2. *Manifested before the person reaches age 22;*
3. *Likely to continue indefinitely; and*
4. *Results in substantial functional limitations in three or more of the following areas of major life activity:*
 - a. *Self-care;*
 - b. *Understanding and use of language;*
 - c. *Learning;*
 - d. *Mobility;*
 - e. *Self-direction; or*
 - f. *Capacity for independent living.]*

"Residential crisis stabilization service" means providing short-term, intensive treatment to individuals who require multidisciplinary treatment in order to stabilize acute psychiatric symptoms and prevent admission to a psychiatric inpatient unit.

"Residential service" means a category of service providing 24-hour care in conjunction with care and treatment or a training program in a setting other than a hospital. Residential services provide a range of living arrangements from highly structured and intensively supervised to relatively independent requiring a modest amount of staff support and monitoring. Residential services include, but are not limited to: residential treatment, group homes, supervised living, residential crisis stabilization, community gero-psychiatric residential, community intermediate care facility-MR, sponsored residential homes, medical and social detoxification, and substance abuse residential treatment for women and children.

"Residential treatment service" means providing an intensive and highly structured mental health or substance abuse treatment service in a residential setting, other than an inpatient service.

"Respite care service" means providing for a short-term, time limited period of care of an individual for the purpose of providing relief to the individual's family, guardian, or regular

care giver. Individuals providing respite care are recruited, trained, and supervised by a licensed provider. These services may be provided in a variety of settings including residential, day support, in-home, or in a sponsored residential home.

"Restraint" means the use of an approved mechanical device, physical intervention or hands-on hold, or pharmacologic agent to involuntarily prevent an individual receiving services from moving his body to engage in a behavior that places him or others at risk. This term includes restraints used for behavioral, medical, or protective purposes.

1. A restraint used for "behavioral" purposes means the use of an approved physical hold, a psychotropic medication, or a mechanical device that is used for the purpose of controlling behavior or involuntarily restricting the freedom of movement of the individual in an instance in which there is an imminent risk of an individual harming himself or others, including staff; when nonphysical interventions are not viable; and safety issues require an immediate response.

2. A restraint used for "medical" purposes means the use of an approved mechanical or physical hold to limit the mobility of the individual for medical, diagnostic, or surgical purposes and the related post-procedure care processes, when the use of such a device is not a standard practice for the individual's condition.

3. A restraint used for "protective" purposes means the use of a mechanical device to compensate for a physical deficit, when the individual does not have the option to remove the device. The device may limit an individual's movement and prevent possible harm to the individual (e.g., bed rail or gerichair) or it may create a passive barrier to protect the individual (e.g., helmet).

4. A "mechanical restraint" means the use of an approved mechanical device that involuntarily restricts the freedom of movement or voluntary functioning of a limb or a portion of a person's body as a means to control his physical activities, and the individual receiving services does not have the ability to remove the device.

5. A "pharmacological restraint" means a drug that is given involuntarily for the emergency control of behavior when it is not standard treatment for the individual's medical or psychiatric condition.

6. A "physical restraint" (also referred to "manual hold") means the use of approved physical interventions or "hands-on" holds to prevent an individual from moving his body to engage in a behavior that places him or others at risk of physical harm. Physical restraint does not include the use of "hands-on" approaches that occur for extremely brief periods of time and never exceed more than a few seconds duration and are used for the following purposes: (i) to intervene in or redirect a potentially dangerous encounter in which the individual may voluntarily move away from the situation or hands-on approach or (ii) to quickly de-escalate a dangerous situation that could cause harm to the individual or others.

"Restriction" means anything that limits or prevents an individual from freely exercising his rights and privileges.

"Screening" means the preliminary assessment of an individual's appropriateness for admission or readmission to a service.

"Seclusion" means the involuntary placement of an individual receiving services alone, in a locked room or secured area from which he is physically prevented from leaving.

"Serious injury" means any injury resulting in bodily hurt, damage, harm or loss that requires medical attention by a licensed physician.

"Service" or *"services"* means individually planned interventions intended to reduce or ameliorate mental illness, mental retardation or substance addiction or abuse through care and treatment, training, habilitation or other supports that are delivered by a provider to individuals with mental illness, mental retardation, or substance addiction or abuse. *Service also means in-home support, day support, and crisis stabilization services provided to individuals under the IFDDS Waiver.*

"Shall" means an obligation to act is imposed.

"Shall not" means an obligation not to act is imposed.

"Skills training" means systematic skill building through curriculum-based psychoeducational and cognitive-behavioral interventions. These interventions break down complex objectives for role performance into simpler components, including basic cognitive skills such as attention, to facilitate learning and competency.

"Social detoxification service" means providing nonmedical supervised care for the natural process of withdrawal from excessive use of alcohol or other drugs.

"Sponsored residential home" means a service where providers arrange for, supervise and provide programmatic, financial, and service support to families or individuals (sponsors) providing care or treatment in their own homes.

"State authority" means the Virginia Department of Mental Health, Mental Retardation and Substance Abuse Services. This is the agency designated by the Governor to exercise the responsibility and authority for governing the treatment of opiate addiction with an opioid drug.

"Substance abuse" means the use, without compelling medical reason, of alcohol and other drugs which results in psychological or physiological dependency or danger to self or others as a function of continued use in such a manner as to induce mental, emotional or physical impairment and cause socially dysfunctional or socially disordering behavior.

"Substance abuse residential treatment for women with children service" means a 24-hour residential service providing an intensive and highly structured substance abuse service for women with children who live in the same facility.

"Supervised living residential service" means the provision of significant direct supervision and community support services to individuals living in apartments or other residential settings. These services differ from supportive in-home service

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because the provider assumes responsibility for management of the physical environment of the residence, and staff supervision and monitoring are daily and available on a 24-hour basis. Services are provided based on the needs of the individual in areas such as food preparation, housekeeping, medication administration, personal hygiene, and budgeting.

"*Supportive in-home service*" (formerly supportive residential) means the provision of community support services and other structured services to assist individuals. Services strengthen individual skills and provide environmental supports necessary to attain and sustain independent community residential living. They include, but are not limited to, drop-in or friendly-visitor support and counseling to more intensive support, monitoring, training, in-home support, respite care and family support services. Services are based on the needs of the individual and include training and assistance. These services normally do not involve overnight care by the provider; however, due to the flexible nature of these services, overnight care may be provided on an occasional basis.

"*Time out*" means assisting an individual to regain emotional control by removing the individual from his immediate environment to a different, open location until he is calm or the problem behavior has subsided.

"*Volunteer*" means a person who, without financial remuneration, provides services to individuals on behalf of the provider.

12 VAC 35-105-30. Licenses.

A. Licenses are issued to providers who offer services to one or a combination of the ~~three~~ *four* disability groups: persons with mental illness, persons with mental retardation, ~~and~~ persons with substance addiction or abuse problems, [~~and~~ or] persons with [~~developmental disabilities or~~] related conditions served under the IFDDS Waiver.

B. Providers shall be licensed to provide specific services as defined in this chapter or as determined by the commissioner. These services include:

1. Case management;
2. Clubhouse;
3. Community gero-psychiatric residential;
4. Community intermediate care facility-MR;
- [5. *Crisis stabilization (residential and nonresidential)*;]
- [~~6.~~ 6.] Day support;
- [~~6.~~ 7.] Day treatment;
- [~~7.~~ 8.] Group home residential;
- [~~8.~~ 9.] Inpatient psychiatric;
- [9- 10.] Intensive Community Treatment (ICT);
- [~~10.~~ 11.] Intensive in-home;
- [11- 12.] Intensive outpatient;
- [~~12.~~ 13.] Medical detoxification;

- [~~13.~~ 14.] Mental health community support;
- [~~14.~~ 15.] Opioid treatment;
- [~~15.~~ 16.] Outpatient;
- [~~16.~~ 17.] Partial hospitalization;
- [~~17.~~ 18.] Program of assertive community treatment (PACT);
- [~~18.~~ 19.] Psychosocial rehabilitation;
- [~~19.~~ Residential crisis stabilization;]
20. Residential treatment;
21. Respite;
22. Social detoxification;
23. Sponsored residential home;
24. Substance abuse residential treatment for women with children;
25. Supervised living; and
26. Supportive in-home.

C. A license addendum describes the services licensed, the population served, specific locations where services are provided or organized and the terms, and conditions for each service offered by a licensed provider. For residential and inpatient services, the license identifies the number of beds each location may serve.

12 VAC 35-105-280. [No change from proposed.]

12 VAC 35-105-590. Provider staffing plan.

A. The provider shall design and implement a staffing plan including the type and role of employees and contractors that reflects the:

1. Needs of the population served;
2. Types of services offered;
3. The service description; and
4. The number of people served.

B. The provider shall develop a transition staffing plan for new services, added locations, and changes in capacity.

C. The following staffing requirements relate to supervision.

1. The provider shall describe how employees, volunteers, contractors and student interns are to be supervised in the staffing plan.
2. Supervision of employees, volunteers, contractors and student interns shall be provided by persons who have experience in working with the population served and in providing the services outlined in the service description. In addition, supervision of mental health services shall be performed by a QMHP and supervision of mental retardation services shall be performed by a QMRP or an employee or contractor with experience equivalent to the educational requirement. *Supervision of IFDDS Waiver services shall be performed by a QDDP or an employee or*

contractor with [equivalent] experience [~~equivalent to the educational requirement~~].

3. Supervision shall be appropriate to the services provided and the needs of the individual. Supervision shall be documented.

4. Supervision shall include responsibility for approving assessments and individualized services plans. This responsibility may be delegated to an employee or contractor who is a QMHP or, QMRP, or QDDP, or who has equivalent experience.

D. The provider shall employ or contract with persons with appropriate training, as necessary, to meet the specialized needs of and to ensure the safety of individuals being served in residential services with medical or nursing needs, speech, language or hearing problems or other needs where specialized training is necessary.

12 VAC 35-105-660. [No change from proposed.]

12 VAC 35-105-800. [No change from proposed.]

VA.R. Doc. No. R02-322; Filed July 22, 2003, 10:16 a.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

VIRGINIA BOARD FOR ASBESTOS, LEAD, AND HOME INSPECTORS

REGISTRAR'S NOTICE: Due to its length, 18 VAC 15-30, filed by the Virginia Board for Asbestos, Lead, and Home Inspectors, is not being published. However, in accordance with § 2.2-4031 of the Code of Virginia, the summary is being published in lieu of the full text. The full text of the regulation is available for public inspection at the office of the Registrar of Regulations and at the Department of Professional and Occupational Regulation (see contact information below) and is accessible on the Virginia Register of Regulations website at <http://register.state.va.us/codecomm/register/vol19/welcome.htm>.

Title of Regulation: 18 VAC 15-30. Virginia Lead-Based Paint Activities Regulations (amending 18 VAC 15-30-10 through 18 VAC 15-30-50, 18 VAC 15-30-100 through 18 VAC 15-30-180, 18 VAC 15-30-250 through 18 VAC 15-30-300, 18 VAC 15-30-330 through 18 VAC 15-30-520, 18 VAC 15-30-540, 18 VAC 15-30-550, 18 VAC 15-30-610, 18 VAC 15-30-620, 18 VAC 15-30-650, and 18 VAC 15-30-770 through 18 VAC 15-30-820; adding 18 VAC 15-30-41, 18 VAC 15-30-205, 18 VAC 15-30-245, 18 VAC 15-30-541, 18 VAC 15-30-542, 18 VAC 15-30-651; repealing 18 VAC 15-30-60 through 18 VAC 15-30-90, 18 VAC 15-30-190 through 18 VAC 15-30-240, 18 VAC 15-30-310, 18 VAC 15-30-320, 18 VAC 15-30-530, 18 VAC 15-30-560 through 18 VAC 15-30-600, 18 VAC 15-30-630, 18 VAC 15-30-640, 18 VAC 15-30-660 through 18 VAC 15-30-750, 18 VAC 15-30-830, and 18 VAC 15-30-840).

Statutory Authority: § 54.1-501 of the Code of Virginia.

Effective Date: October 1, 2003.

Agency Contact: Tom Perry, Regulatory Boards Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad Street, Richmond, VA 23230, telephone (804) 367-8595, FAX (804) 367-2475 or e-mail asbestos@dpor.state.va.us.

Summary:

The amendments deregulate lead-based paint activities in "public buildings," "commercial buildings," and "superstructures" that are currently regulated and provide for the regulation of "child-occupied facilities." In addition the amendments (i) eliminate extensions of interim licenses; (ii) redefine Supervisor and Project Designer training courses as two separate and distinct courses; (iii) eliminate licensure through grandfathering; (iv) replace the Inspector Technician discipline with the Lead Inspector discipline; (v) replace Inspector/Risk Assessor discipline with the Lead Risk Assessor discipline; (vi) add degree fields that may be substituted by Risk Assessors for one year of experience with a bachelor's degree; (vii) eliminate the granting of interim approval to lead training courses; and (viii) require an on-site audit of the training provider prior to approval.

Changes were made to the proposed regulation. Language was modified throughout the final regulation to reflect the implementation of EPA's final regulation in March of 2001 under § 403 of the Toxic Substances Control Act to establish standards for lead-based paint hazards in most pre-1978 housing and child-occupied facilities. In addition, the final regulations (i) delete the degree fields that may be substituted by Risk Assessors for one year of experience with a bachelor's degree; (ii) require training providers to send notification of a training program at least 48 hours before the start of the training program and to send a roster of the training program within 24 hours of completion of the training program; (iii) prohibit persons performing post-abatement clearance from having any financial connection with the abatement contractor; (iv) add language to expand "altering a training certificate" to include both falsifying and issuing a fraudulent certificate; (v) give the board the authority to deny an application or to discipline a regulant for violating any federal or state regulation pertinent to lead-based paint activities; and (vi) hold the abatement contractor responsible for the actions and conduct of its lead abatement workers and supervisors.

Summary of Public Comments and Agency's Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

VA.R. Doc. No. R00-186; Filed July 15, 2003, 1:19 p.m.

DEPARTMENT OF HEALTH PROFESSIONS

Title of Regulation: 18 VAC 76-20. Regulations Governing the Prescription Monitoring Program (adding 18 VAC 76-20-10 through 18 VAC 76-20-60).

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Statutory Authority: §§ 54.1-2505 and 54.1-2520 of the Code of Virginia.

Effective Date: September 10, 2003.

Agency Contact: Elaine J. Yeatts, Senior Policy Analyst, Department of Health Professions, 6603 W. Broad Street, 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9918, FAX (804) 662-9114, or e-mail elaine.yeatts@dhp.state.va.us.

Summary:

The regulations establish a Prescription Monitoring Program as mandated by Chapter 481 of the 2002 Acts of Assembly. The regulations (i) restate the criteria for reporting waivers and information disclosure from Chapter 25.2 (§ 54.1-2519 et seq.) of Title 54.1 of the Code of Virginia; (ii) set forth standards for and timing of data reports; (iii) set forth instructions on applying for reporting waivers; and (iv) set forth instructions on applying for information disclosure from the database. The program only applies to southwestern Virginia, i.e., Health Planning District III.

Summary of Public Comments and Agency's Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

REGISTRAR'S NOTICE: The proposed regulation was adopted as published in 19:15 VA.R. 2255-2260 April 7, 2003, with the changes identified below. Pursuant to § 2.2-4031 A of the Code of Virginia, the adopted regulation is not published at length; however, the sections that have changed since publication of the proposed are set out.

CHAPTER 76.
REGULATIONS GOVERNING THE PRESCRIPTION
MONITORING PROGRAM.

18 VAC 76-20-10. [No change from proposed.]

18 VAC 76-20-20. [No change from proposed.]

18 VAC 76-20-30. Criteria for granting waivers of the reporting requirements.

A. The director may grant a waiver of all or some of the reporting requirements established in § 54.1-2521 of the Code of Virginia to an individual or entity who files a request in writing on a form provided by the department and who meets the criteria for such a waiver.

B. Criteria for a waiver of the reporting requirements shall include a history of compliance with laws and regulations by the pharmacy, the pharmacist-in-charge, and other pharmacists regularly practicing at that location and may include, but not be limited to:

1. A [substantial] hardship created by a natural disaster or other emergency beyond the control of the pharmacist or pharmacy; or
2. Dispensing in a controlled research project approved by a regionally accredited institution of higher education or under the supervision of a governmental agency.

C. Consistent with the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia), a waiver may be granted by a subordinate designated by the director on a case-by-case basis, subject to terms and conditions stated in an order with a specified time period and subject to being vacated. An appeal of the initial decision may be filed with the director who shall appoint an informal fact-finding conference, which shall thereafter make a recommendation to the director. The decision of the director shall be final.

18 VAC 76-20-40. Standards for the manner and format of reports and a schedule for reporting.

A. Data shall be transmitted to the department or its agent on a semi-monthly basis in the Telecommunication Format for Controlled Substances ([August 1999, May 1995,] of the American Society of Automation in Pharmacy (ASAP), which are hereby incorporated by reference into this chapter.

B. Data shall be transmitted in a file layout provided by the department and shall be transmitted by a media acceptable to the vendor contracted by the director for the program. [Such transmission shall begin on a date specified by the director, no less than 30 days from notification by the director to dispensers required to report.

C. Under extraordinary circumstances, an alternative means of reporting may be approved by the director.

D. Data not accepted by the vendor due to a substantial number of errors or omissions shall be corrected and resubmitted to the vendor within five business days of receiving notification that the submitted data had an unacceptable number of errors or problems.]

18 VAC 76-20-50. [No change from proposed.]

18 VAC 76-20-60. Criteria for discretionary disclosure of information by the director.

A. In accordance with § 54.1-2523 C of the Code of Virginia, the director may disclose information in the program to certain persons provided the request is made in writing on a form provided by the department [and which contains a notarized signature of the requesting party].

B. The director may disclose information to:

1. The recipient of the dispensed drugs, provided the request is accompanied by a copy of a [driver's license valid photo identification issued by a government agency of any jurisdiction in the United States] verifying that the recipient is over the age of 18 [and includes a notarized signature of the requesting party]. The report shall be mailed to the address on the license or delivered to the recipient at the department.
2. The prescriber for the purpose of establishing a treatment history, provided the request is accompanied by the prescriber's license number issued by the department, the signature of the prescriber, and [an attestation that he has obtained a copy of the] written consent [obtained] from the recipient. Such written consent shall be separate and distinct from any other consent documents required by the practitioner.

3. Another regulatory authority conducting an investigation or disciplinary proceeding or making a decision on the granting of a license or certificate, provided the request [is related to an allegation of a possible controlled substance violation and that it] is accompanied by the signature of the chief executive officer who is authorized to certify orders or to grant or deny licenses.

4. Governmental entities charged with the investigation and prosecution of a dispenser, prescriber or recipient participating in the Virginia Medicaid program, provided the request is accompanied by the signature of the official within the Office of the Attorney General responsible for the investigation.

C. In each case, the request must be complete and provide sufficient information to ensure the correct identity of the prescriber, recipient and/or dispenser. Such request shall be submitted in writing by mail, private delivery service, in person at the department offices or by facsimile.

[D. Except as provided in subsection B 1 of this section, the request form shall be signed with an attestation that the prescription data will not be further disclosed and only used for the purposes stated in the request and in accordance with the law.]

DOCUMENT INCORPORATED BY REFERENCE

Telecommunication Format for Controlled Substances, [~~August 1999~~ May 1995], American Society [~~of~~ for] Automation in Pharmacy (ASAP).

NOTICE: The forms used in administering 18 VAC 76-20, Regulations Governing the Prescription Monitoring Program, are not being published due to the large number; however, the name of each form is listed below. The forms are available for public inspection at the Department of Health Professions, 6603 West Broad Street, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS

Request for Waiver of Reporting Requirements for Prescription Monitoring Program (eff. 3/03).

Request to Register as an Authorized Agent to Receive Information from the Virginia Prescription Monitoring Program (eff. 3/03).

Request for Disclosure of Information from Prescription Monitoring Program (eff. [~~3/03~~ 7/03]).

[*Recipient Request for Discretionary Disclosure of Information from Prescription Monitoring Program (eff. 7/03).*

Prescriber Request for Discretionary Disclosure of Information from Prescription Monitoring Program (eff. 7/03).

Regulatory Authority Request for Discretionary Disclosure of Information from Prescription Monitoring Program (eff. 7/03).

Investigation under Virginia Medicaid Program; Request for Discretionary Disclosure of Information from Prescription Monitoring Program (eff. 7/03).]

VA.R. Doc. No. R02-226; Filed July 22, 2003, 11:03 a.m.

BOARD FOR HEARING AID SPECIALISTS

Title of Regulation: 18 VAC 80-20. Board for Hearing Aid Specialists Regulations (amending 18 VAC 80-20-10, 18 VAC 80-20-30, 18 VAC 80-20-40, 18 VAC 80-20-50, 18 VAC 80-20-70, 18 VAC 80-20-80, 18 VAC 80-20-120 through 18 VAC 80-20-160, 18 VAC 80-20-180, and 18 VAC 80-20-200 through 18 VAC 80-20-270; repealing 18 VAC 80-20-60 and 18 VAC 80-20-170).

Statutory Authority: § 54.1-201 of the Code of Virginia.

Effective Date: October 1, 2003

Agency Contact: William H. Ferguson, II, Assistant Director, Board for Hearing Aid Specialists, 3600 W. Broad Street, Richmond, VA 23230, telephone (804) 367-8310, FAX (804) 367-6295, or e-mail hearingaidspec@dpor.state.va.us.

Summary:

The amendments (i) clarify entry requirements for licensure; (ii) modify the procedures and provisions regarding renewal and reinstatement; and (iii) ensure that the standards of practice and conduct meet all current laws and statutes.

Substantive changes (i) allow the board to extend temporary permits under specified appropriate circumstances; (ii) allow examinees to retake only the portions of the licensing exam that they have failed; (iii) remove the requirement that speech tests be conducted after hearing aid fittings; and (iv) remove the requirement that specialists refer clients to a physician if tinnitus is detected.

Changes from the proposed regulation delete affidavit requirements, revise requirements for fitting and sale of hearing aids for children, retain the requirement that hearing aid specialists check for tinnitus and if found refer the person to a licensed physician, add language clarifying that post-fitting test are required, and correct text to bring language in compliance with assignment of expiration date.

Summary of Public Comments and Agency's Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

REGISTRAR'S NOTICE: The proposed regulation was adopted as published in 18:25 VA.R. 3529-3549 August 26, 2002, with the changes identified below. Pursuant to § 2.2-4031 of the Code of Virginia, the adopted regulation is not published at length; however, the sections that have changes since publication of the proposed are set out.

18 VAC 80-20-10. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

["~~Affidavit~~" means a written statement of facts, made voluntarily, and confirmed by the oath or affirmation of the party making it, taken before a notary or other person having the authority to administer such oath or affirmation.]

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~~"Audiologist" means any person who accepts compensation for examining, testing, evaluating, treating or counseling persons having or suspected of having disorders or conditions affecting hearing and related communicative disorders or who assists persons in the perception of sound and is not authorized by another regulatory or health regulatory board to perform any such services engages in the practice of audiology as defined by § 54.1-2600 of the Code of Virginia.~~

~~"Board" means the Board for Hearing Aid Specialists.~~

~~"Department" means the Department of Professional and Occupational Regulation.~~

~~"Hearing aid specialist" means a person who engages in the practice of fitting and dealing in hearing aids or who advertises or displays a sign or represents himself as a person who practices the fitting and dealing of hearing aids.~~

~~"Licensed sponsor" means a licensed hearing aid specialist who is responsible for training one or more individuals holding a temporary permit.~~

~~"Licensee" means any person holding a valid license issued by the Board for Hearing Aid Specialists for the practice of fitting and dealing in hearing aids, as defined in § 54.1-1500 of the Code of Virginia.~~

~~"Otolaryngologist" means a licensed physician specializing in ear, nose and throat disorders.~~

~~"Otologist" means a licensed physician specializing in diseases of the ear.~~

~~"Reciprocity" means an agreement between two or more states that will to recognize and accept one another's regulations and laws for privileges for mutual benefit.~~

~~"Reinstatement" means having a license restored to effectiveness after the expiration date has passed.~~

~~"Renewal" means continuing the effectiveness of a license for another period of time.~~

~~"Temporary permit holder" means any person who holds a valid temporary permit under this chapter.~~

18 VAC 80-20-30. Basic qualifications for licensure.

A. Every applicant to the board for a license shall provide information on his application establishing that:

1. The applicant is at least 18 years of age.
2. The applicant has a good reputation for honesty, truthfulness, and fair dealing, and is competent to transact the business of a hearing aid specialist in such a manner as to safeguard the interests of the public ~~successfully completed high school or a high school equivalency course.~~
3. The applicant is in good standing as a licensed hearing aid specialist in every jurisdiction where licensed. The applicant must disclose if he has had a license as a hearing aid specialist which was suspended, revoked, surrendered in connection with a disciplinary action or which has been the subject of discipline in any jurisdiction prior to applying for licensure in Virginia. At the time of application for licensure, the applicant must also disclose any disciplinary

~~action taken in another jurisdiction in connection with the applicant's practice as a hearing aid specialist. The applicant must also disclose whether he has been previously licensed in Virginia as a hearing aid specialist. has training and experience that covers the following subjects as they pertain to hearing aid fitting and the sale of hearing aids, accessories and services:~~

- a. Basic physics of sound;
- b. Basic maintenance and repair of hearing aids;
- c. The anatomy and physiology of the ear;
- d. Introduction to psychological aspects of hearing loss;
- e. The function of hearing aids and amplification;
- f. Visible disorders of the ear requiring medical referrals;
- g. Practical tests utilized for selection or modification of hearing aids;
- h. Pure tone audiometry, including air conduction, bone conduction, and related tests;
- i. Live voice or recorded voice speech audiometry, including speech reception threshold testing and speech discrimination testing;
- j. Masking when indicated;
- k. Recording and evaluating audiograms and speech audiometry to determine the proper selection and adaptation of hearing aids;
- l. Taking earmold impressions;
- m. Proper earmold selection;
- n. Adequate instruction in proper hearing aid orientation;
- o. Necessity of proper procedures in after-fitting checkup; and
- p. Availability of social service resources and other special resources for the hearing impaired.

~~4. The applicant has successfully completed high school or a high school equivalency course, provided one of the following as verification of completion of training and experience as described in subdivision 3 of this subsection:~~

- a. ~~[An affidavit~~ A statement] on a form provided by the board signed by the licensed sponsor certifying that the requirements have been met; or
- b. A certified true copy of a transcript of courses completed at an accredited college or university, or other notarized documentation of completion of the required experience and training.

~~5. The applicant is fit and suited to engage in the practice of fitting and dealing in hearing aids. The applicant must disclose if he has been convicted in any jurisdiction of a misdemeanor involving lying, cheating, stealing, sexual offense, drug distribution, physical injury, or relating to the practice of the profession or of any felony shall not have been convicted or found guilty of any crime directly related to the practice of fitting and dealing in hearing aids,~~

regardless of the manner of adjudication, in any jurisdiction of the United States. Except for misdemeanor convictions that occurred five or more years prior to the date of application, with no subsequent convictions, all criminal convictions shall be considered as part of the totality of the circumstances of each applicant. The applicant review of prior convictions shall be subject to the requirements of § 54.1-204 of the Code of Virginia. Any plea of nolo contendere shall be considered a conviction for purposes of this paragraph subdivision. The record of a conviction authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such conviction or guilt.

~~6. The applicant has training and experience which covers the following subjects as they pertain to hearing aid fitting and the sale of hearing aids, accessories and services:~~

- ~~a. Basic physics of sound;~~
- ~~b. Basic maintenance and repair of hearing aids;~~
- ~~c. The anatomy and physiology of the ear;~~
- ~~d. Introduction to psychological aspects of hearing loss;~~
- ~~e. The function of hearing aids and amplification;~~
- ~~f. Visible disorders of the ear requiring medical referrals;~~
- ~~g. Practical tests of proficiency in the required techniques as they pertain to the fitting of hearing aids;~~
- ~~h. Pure tone audiometry, including air conduction, bone conduction, and related tests;~~
- ~~i. Live voice or recorded voice speech audiometry, including speech reception, threshold testing and speech discrimination testing.~~
- ~~j. Masking when indicated;~~
- ~~k. Recording and evaluating audiograms and speech audiometry to determine the proper selection and adaptation of hearing aids;~~
- ~~l. Taking earmold impressions;~~
- ~~m. Proper earmold selection;~~
- ~~n. Adequate instruction in proper hearing aid orientation;~~
- ~~o. Necessity of proper procedures in after-fitting checkup; and~~
- ~~p. Availability of social service resources and other special resources for the hearing impaired.~~

~~7. The applicant has provided one of the following as verification of completion of training and experience as described in subdivision 6 of this subsection:~~

- ~~a. An affidavit on a form provided by the board signed by the licensed sponsor certifying that the requirements have been met; or~~
- ~~b. A certified true copy of a transcript of courses completed at an accredited college or university, or other~~

~~notarized documentation of completion of the required experience and training.~~

~~6. The applicant is in good standing as a licensed hearing aid specialist in every jurisdiction where licensed. The applicant must disclose if he has had a license as a hearing aid specialist that was suspended, revoked, or surrendered in connection with a disciplinary action or that has been the subject of discipline in any jurisdiction prior to applying for licensure in Virginia. At the time of application for licensure, the applicant must also disclose any disciplinary action taken in another jurisdiction in connection with the applicant's practice as a hearing aid specialist. The applicant must also disclose whether he has been previously licensed in Virginia as a hearing aid specialist.~~

~~8. 7. The applicant has disclosed his physical address. A post office box is not acceptable.~~

~~9. 8. The nonresident applicant for a license has filed and maintained with the department an irrevocable consent for the department to serve as service agent for all actions filed in any court in the Commonwealth Virginia.~~

~~10. 9. The applicant has submitted the required application with the proper fee as referenced in 18 VAC 80-20-70 and signed, as part of the application, an affidavit certifying a statement that the applicant has read and understands Chapter 15 (§ 54.1-1500 et seq.) of Title 54.1 of the Code of Virginia and the regulations of the board.~~

~~B. The board may make further inquiries and investigations with respect to the qualifications of the applicant or require a personal interview with the applicant or both. Failure of an applicant to comply with a written request from the board for additional information within 60 days of receiving such notice, except in such instances where the board has determined ineligibility for a clearly specified period of time, may be sufficient and just cause for disapproving the application. The board may refuse initial licensure due to the applicant's failure to comply with entry requirements. The licensee is entitled to a review of such action. Appeals from such actions shall be in accordance with the provisions of the Administrative Process Act, Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2 of the Code of Virginia.~~

18 VAC 80-20-40 through 18 VAC 80-20-130. [No change from proposed.]

18 VAC 80-20-140. Reinstatement required.

If a licensee fails to meet the requirements for renewal and submit the renewal fee within 30 days after the expiration date on the license, the licensee must apply for reinstatement on a form provided by the board.

- 1. Applicants for reinstatement shall continue to meet the standards of entry in 18 VAC 80-20-30 A 2, 18 VAC 80-20-30 A 3, and 18 VAC 80-20-30 A 5, ~~18 VAC 80-20-30 A 8 and through 18 VAC 80-20-30 A 9 of this chapter.~~
- 2. Applicants for reinstatement shall submit the required fee referenced in 18 VAC 80-20-70 ~~of this chapter.~~
- 3. ~~Twelve months [Three Two] years~~ after the expiration date on the license, reinstatement is no longer possible. To

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resume practice as a hearing aid specialist, the former licensee must apply as a new applicant for licensure, meeting all educational, examination, and experience requirements as listed in the regulations current at the time of reapplication.

4. Any hearing aid specialist activity conducted subsequent to the expiration date of the license may constitute unlicensed activity and may be subject to prosecution by the Commonwealth under §§ 54.1-111 and 54.1-202 of the Code of Virginia.

18 VAC 80-20-150 through 18 VAC 80-20-220. [No change from proposed.]

18 VAC 80-20-230. Fitting and sale of hearing aids for children.

[1.] Any person engaging in the fitting and sale of hearing aids for a child under 18 years of age shall [~~not~~] ascertain whether such child has been examined by [a] ~~an~~ otolaryngologist or [] licensed physician [~~for recommendation~~] within six months prior to fitting [~~and~~].

2. No child [~~under 18 years of age~~] shall be [~~initially~~] fitted ~~without such recommendation~~ with a hearing aid [or hearing aids] unless the licensed hearing aid specialist has been presented with a written statement signed by [~~the licensed physician~~] an otolaryngologist [] stating the child's hearing loss has been medically evaluated and the child may be considered a candidate for a hearing aid. The medical evaluation must have taken place within the preceding six months.

[3. No child under 18 years of age shall be subsequently fitted with a hearing aid or hearing aids unless the licensed hearing aid specialist has been presented with a written statement signed by a licensed physician stating the child's hearing loss has been medically evaluated and the child may be considered a candidate for a hearing aid. The medical evaluation must have taken place within the preceding six months.]

18 VAC 80-20-240. [No change from proposed.]

18 VAC 80-20-250. Testing procedures.

It shall be the duty of each licensee and holder of a temporary permit engaged in the fitting and sale of hearing aids to use appropriate testing procedures for each hearing aid fitting. All tests and case history information must be retained in the records of the specialist. The established requirements shall be:

1. Air Conduction Tests A.N.S.I. standard frequencies of 500-1000-2000-4000 Hertz. *Intermediate frequencies shall be tested if the threshold difference between octaves exceeds 15dB.* Appropriate masking must be used if the difference between the two ears is 40 dB or more at any one frequency.

2. Bone Conduction Tests are to be made on every client--A.N.S.I. standards at 500-1000-2000-4000 Hertz. Proper masking is to be applied if the air conduction and bone conduction readings for the test ear at any one frequency differ by 15 dB or if lateralization occurs.

3. Speech testings shall be made before ~~and after~~ fittings, ~~and the type of test(s), method of presentation, and results noted [Tests used to evaluate the fitting and] shall be recorded with type of test, method of presentation and the test results.~~

4. The specialist shall check for the following conditions and, if they are found to exist, shall refer the client to a licensed physician unless the client can show that his present condition is under treatment or has been treated:

- a. Visible congenital or traumatic deformity of the ear.
- b. History of active drainage from the ear within the previous 90 days.
- c. History of sudden or rapidly progressive hearing loss within the previous 90 days.
- d. Acute or chronic dizziness.
- e. Unilateral hearing loss.
- f. Audiometric air bone gap equal to or greater than 15 dB at 500 Hertz, 1000 Hertz, and 2000 Hertz.
- g. Visible evidence or significant cerumen accumulation or a foreign body in the ear canal.
- [h. Tinnitus as a primary symptom.]
- [i. ~~is~~] Pain or discomfort in the ear.

5. All tests shall have been conducted no more than six months prior to the fitting.

[6. Post-fitting testing shall be made and recorded with type of test, method of presentation and the test results.]

18 VAC 80-20-260. [No change from proposed.]

18 VAC 80-20-270. [No change from proposed.]

NOTICE: The forms used in administering 18 VAC 80-20, Board for Hearing Aid Specialists Regulations, are not being published; however, the name of each form is listed below. The forms are available for public inspection at the Department of Professional and Occupational Regulation, 3600 W. Broad Street, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS

~~Application For A Hearing Aid Specialists License (eff. 7/24/95).~~

~~Application For Reinstatement of License (eff. 7/24/95).~~

~~Application For Reexamination (eff. 7/24/95).~~

License Application, 21LIC (rev. [9/00 7/03].

Temporary Permit Application, 21TPER (eff. [40/99 7/03].

Reinstatement Application, 21REI (rev. [40/99 7/03].

Reexamination Application, 21REEX (rev. 12/00).

VA.R. Doc. No. R01-244; Filed July 21, 2003, 3:21 p.m.

REAL ESTATE BOARD

Title of Regulation: 18 VAC 135-50. Fair Housing Regulations (amending 18 VAC 135-50-10, 18 VAC 135-50-30, [18 VAC 135-50-50,] 18 VAC 135-50-70 through [~~18 VAC 135-50-120~~ 18 VAC 135-50-110], 18 VAC 135-50-140, [~~18 VAC 135-50-160 through~~ 18 VAC 135-50-190,] 18 VAC 135-50-210, 18 VAC 135-50-220, 18 VAC 135-50-270, 18 VAC 135-50-290, 18 VAC 135-50-300, 18 VAC 135-50-330, 18 VAC 135-50-350, 18 VAC 135-50-390, 18 VAC 135-50-400, 18 VAC 135-50-420, 18 VAC 135-50-440 [, ~~18 VAC 135-50-450, through~~] 18 VAC 135-50-470, [~~18 VAC 135-50-480,] and 18 VAC 135-50-510 [, 18 VAC 135-50-530] ; adding 18 VAC 135-50-212, 18 VAC 135-50-215, and 18 VAC 135-50-217; repealing 18 VAC 135-50-40, [~~18 VAC 135-50-50, 18 VAC 135-50-130,] 18 VAC 135-50-150, 18 VAC 135-50-230, 18 VAC 135-50-240, 18 VAC 135-50-250, [~~18 VAC 135-50-310,] 18 VAC 135-50-330, [~~18 VAC 135-50-340, 18 VAC 135-50-360, 18 VAC 135-50-370, 18 VAC 135-50-380, 18 VAC 135-50-460, 18 VAC 135-50-530, 18 VAC 135-50-540,] and 18 VAC 135-50-560 through 18 VAC 135-50-590).~~~~~~~~

Statutory Authority: §§ 36-96.20 C and 54.1-2105 of the Code of Virginia.

Effective Date: September 10, 2003.

Agency Contact: Karen W. O'Neal, Deputy Director, Department of Professional and Occupational Regulation, 3600 W. Broad Street, Richmond, VA 23230, telephone (804) 367-8537, FAX (804) 367-2475 or e-mail oneal@dpor.state.va.us.

Summary:

The amendments (i) make numerous changes to conform the regulation with changes made by the General Assembly since 1992; (ii) reflect changes in federal law that have occurred since 1992, including adding language to conform the regulation with the federal Housing for Older Persons Act of 1995; (iii) eliminate language that is duplicative of current law; and (iv) clarify language relating to discriminatory conduct.

Changes are made to the proposed regulation. The definitions of "handicap" and "has a record of impairment" are amended for clarity. Original language from current regulations is retained in many instances due to public comments received indicating that deletion of many of the provisions of the proposed regulation would lead to confusion among those subject to the terms of the Fair Housing Law and Regulations. Comments were also received expressing concern that many of the changes would lead to a more narrow interpretation of the law and reduce consistency with the federal fair housing law. Those provisions are retained in the final regulations.

REGISTRAR'S NOTICE: The proposed amendments to 18 VAC 135-50-120, 18 VAC 135-50-130, 18 VAC 135-50-160, 18 VAC 135-50-170, 18 VAC 135-50-180, 18 VAC 135-50-310, 18 VAC 135-50-340, 18 VAC 135-50-360, 18 VAC 135-50-370, 18 VAC 135-50-380, 18 VAC 135-50-480, and 18 VAC 135-50-540 as published in 18:23 VA.R. 3075-3093 July

29, 2002, were not adopted and the existing language has been retained, therefore, those sections are not set out.

The remaining sections of the proposed regulation were adopted as published with the changes identified below. Pursuant to § 2.2-4031 of the Code of Virginia, the adopted regulation is not published at length; however, the sections that have been changed since publication of the proposed are set out.

18 VAC 135-50-10 through 18 VAC 135-50-40. [No change from proposed.]

18 VAC 135-50-50. [Scope. (~~Repealed.~~)]

[It is the policy of Virginia to provide, within constitutional limitations, for fair housing throughout the Commonwealth and to] ~~provide~~ [*impose obligations*, rights and remedies substantially equivalent to those granted under federal law. No person shall be subject to discriminatory housing practices because of race, color, religion, sex, handicap, elderliness, familial status, or national origin in the sale, rental, advertising of dwellings, inspection of dwellings or entry into a neighborhood, in the provision of brokerage services, financing or the availability of residential real estate-related transactions.]

18 VAC 135-50-70. [No change from proposed.]

18 VAC 135-50-80. Unlawful refusal to sell or rent or to negotiate for the sale or rental.

~~A. It shall be unlawful for a person to refuse to sell or rent a dwelling to a person who has made a bona fide offer, because of race, color, religion, sex, familial status, elderliness, or national origin, or to refuse to negotiate with a person for the sale or rental of a dwelling because of race, color, religion, sex, familial status, elderliness, or national origin, or to discriminate against any person in the sale or rental of a dwelling because of handicap.~~

~~B. Prohibited actions under this section include [, but are not limited to]:~~

[1. Failing to accept or consider a bona fide offer because of race, color, religion, sex, handicap, familial status, elderliness, or national origin.

2. Refusing to sell or rent a dwelling to, or to negotiate for the sale or rental of a dwelling with, any person because of race, color, religion, sex, handicap, familial status, elderliness, or national origin.]

[~~3. 4.~~] Imposing different sales prices or rental charges for the sale or rental of a dwelling upon any person because of race, color, religion, sex, handicap, familial status, elderliness, or national origin.

[~~4. 2.~~] Using different qualification criteria or applications, or sale or rental standards or procedures, such as income standards, application requirements, application fees, credit analysis or sale or rental approval procedures or other requirements, because of race, color, religion, sex, handicap, familial status, elderliness, or national origin.

[~~5. 3.~~] Evicting tenants because of their race, color, religion, sex, handicap, familial status, elderliness, or

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national origin or because of the race, color, religion, sex, handicap, familial status, elderliness, or national origin of a tenant's guest.

~~NOTE: § 36-96.2 D of the Virginia Fair Housing Law provides that "Nothing in this chapter prohibits conduct against a person because such person has been convicted by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance as defined in federal law."~~

18 VAC 135-50-90. Discrimination in terms, conditions and privileges and in services and facilities.

~~A. It shall be unlawful, because of race, color, religion, sex, handicap, familial status, elderliness, or national origin to impose different terms, conditions or privileges relating to the sale or rental of a dwelling or to deny or limit services or facilities in connection with the sale or rental of a dwelling.~~

~~B. [Examples of] prohibited actions under this section include [, but are not limited to:]~~

1. Using different provisions in leases or contracts of sale, such as those relating to rental charges, security deposits and the terms of a lease and those relating to down payment and closing requirements, because of race, color, religion, sex, handicap, familial status, elderliness, or national origin.

2. Failing or delaying maintenance or repairs of sale or rental dwellings because of race, color, religion, sex, handicap, familial status, elderliness, or national origin.

[3. Failing to process an offer for the sale or rental of a dwelling or to communicate an offer accurately because of race, color, religion, sex, handicap, familial status, elderliness, or national origin.]

[4. ~~3.~~] Limiting the use of privileges, services or facilities associated with a dwelling because of the race, color, religion, sex, handicap, familial status, elderliness or national origin of an owner, tenant or a person associated with him.

[5. ~~4.~~] Denying or limiting services or facilities in connection with the sale or rental of a dwelling, because a person failed or refused to provide sexual favors.

18 VAC 135-50-100. Other prohibited sale and rental conduct.

A. It shall be unlawful, because of race, color, religion, sex, handicap, familial status, elderliness, or national origin to restrict or attempt to restrict the choices of a person by word or conduct in connection with seeking, negotiating for, buying or renting a dwelling so as to perpetuate, or tend to perpetuate, segregated housing patterns, or to discourage or obstruct choices in a community, neighborhood, or development.

Prohibited actions under subsection A of this section which are generally referred to as unlawful steering practices, include [, but are not limited to:]

1. Discouraging any person from inspecting, purchasing, or renting a dwelling because of race, color, religion, sex,

handicap, familial status, elderliness, or national origin or because of the race, color, religion, sex, handicap, familial status, elderliness, or national origin of persons in a community, neighborhood or development.

[2. Discouraging the purchase or rental of a dwelling because of race, color, religion, sex, handicap, familial status, elderliness, or national origin by exaggerating drawbacks or failing to inform any person of desirable features of a dwelling or of a community, neighborhood, or development.]

[3. ~~2.~~] Communicating to any prospective purchaser that he would not be comfortable or compatible with existing residents of a community, neighborhood or development because of race, color, religion, sex, handicap, familial status, elderliness, or national origin.

[4. ~~3.~~] Assigning any person to a particular section of a community, neighborhood or development or to a particular floor or section of a building because of race, color, religion, sex, handicap, familial status, elderliness, or national origin.

B. It shall be unlawful because of race, color, religion, sex, handicap, familial status, elderliness, or national origin to engage in any conduct relating to the provision of housing or of services and facilities in connection therewith that otherwise makes unavailable or denies dwellings to persons.

Prohibited activities relating to dwellings sales and rental practices under ~~subsection B~~ of this section *subsection* include [, but are not limited to:]

1. Discharging or taking other adverse action against an employee, broker, or agent because he refused to participate in a discriminatory housing practice.

2. Employing codes or other devices to segregate or reject applicants, purchasers or renters, refusing to take or to show listings of dwellings in certain areas because of race, color, religion, sex, handicap, familial status, elderliness, or national origin or refusing to deal with certain brokers or agents because they or one or more of their clients are of a particular race, color, religion, sex, handicap, familial status, elderliness, or national origin.

3. Denying or delaying the processing of an application made by a purchaser or renter or refusing to approve such a person for occupancy in a cooperative or condominium dwelling because of race, color, religion, sex, handicap, familial status, elderliness, or national origin.

4. Refusing to provide municipal services or property or hazard insurance for dwelling or providing such services or insurance differently because of race, color, religion, sex, handicap, familial status, elderliness, or national origin.

18 VAC 135-50-110. Discriminatory advertisements, statements and notices.

A. It shall be unlawful to make, print or publish, or cause to be made, printed or published, any notice, statement, or advertisement with respect to the sale or rental of a dwelling which indicates any preference, limitation or discrimination because of race, color, religion, sex, handicap, familial status,

elderliness, or national origin, or an intention to make any such preference, limitation, or discrimination.

[B. The prohibitions in this section shall apply to all written or oral notices or statements by a person engaged in the sale or rental of a dwelling. Written notices and statements include any applications, flyers, brochures, deeds, signs, banners, posters, billboards, or any documents used with respect to the sale or rental of a dwelling.]

[C. ~~B.~~ Discriminatory notices, statements, and advertisements include [, but are not limited to:]

1. Using words, phrases, photographs, illustrations, symbols, or forms which convey that dwellings are available or not available to a particular group of persons because of race, color, religion, sex, handicap, familial status, elderliness or national origin.
2. Expressing to agents, brokers, employees, prospective sellers, or renters or any other persons a preference for or limitation on any purchaser or renter because of race, color, religion, sex, handicap, familial status, elderliness, or national origin of such person.
3. Selecting media or locations for advertising the sale or rental of dwelling which deny particular segments of the housing market information about housing opportunities because of race, color, religion, sex, handicap, familial status, elderliness, or national origin.
4. Refusing to publish advertising for the sale or rental of dwellings or requiring different charges or terms for such advertising because of race, color, religion, sex, handicap, familial status, elderliness, or national origin.

[D. ~~C.~~ Publishers' notice. All publishers ~~should~~ shall publish at the beginning of the real estate advertising section a notice such as that appearing in Table III, Appendix I to ~~Part 109~~, 24 CFR Part 109, Ch. 1 (4-1-89 4-1-00 edition). The notice ~~may~~ shall include a statement regarding the coverage of any local fair housing or human rights ordinance prohibiting discrimination in the sale, rental or financing of dwellings.

[E. ~~D.~~ Fair housing poster requirements.

1. Persons subject [~~Except to the extent that~~] 18 VAC 135-50-140 E 1 b [~~subdivision 2 of this subsection applies, all persons subject~~] to § 36-96.3 of the Virginia Fair Housing Law [~~, Unlawful Discriminatory Housing Practices,~~] shall post and maintain a HUD approved fair housing poster as follows:

- a. With respect to a single-family dwelling (not being offered for sale or rental in conjunction with the sale or rental of other dwellings) offered for sale or rental through a real estate broker, agent, salesman, or person in the business of selling or renting dwellings, such person shall post and maintain a fair housing poster at any place of business where the dwelling is offered for sale or rental.
- b. With respect to all other dwellings covered by the Virginia Fair Housing Law: (i) a fair housing poster shall be posted and maintained at any place of business where the dwelling is offered for sale or rental, and (ii) a fair housing poster shall be posted and maintained at the

dwelling, except that with respect to a single-family dwelling being offered for sale or rental in conjunction with the sale or rental of other dwellings, the fair housing poster may be posted and maintained at the model dwellings or at a conspicuous location instead of at each of the individual dwellings.

c. With respect to those dwellings to which subdivision 1 b of this ~~section~~ subsection applies, the fair housing poster must be posted at the beginning of construction and maintained throughout the period of construction and sale or rental.

~~2. This part shall not require posting and maintaining a fair housing poster. a. On vacant land [, or] b. At [any single-family dwelling, unless such dwelling (i) is being offered for sale or rental in conjunction with the sale or rental of other dwellings in which circumstances a fair housing poster shall be posted and maintained as specified in subdivision 1 b (ii) of this subsection, or (ii) is being offered for sale or rental through a real estate broker, agent, salesman, or person in the business of selling or renting dwellings in which circumstances a fair housing poster shall be posted and maintained as specified in subdivision 1 a of this subsection.]~~

~~3. All persons subject to § 36-96.4 of the Virginia Fair Housing Law, Discrimination in Residential Real Estate-Related Transactions, shall post and maintain a fair housing poster at all their places of business which participate in the covered activities.~~

~~4. All persons subject to 18 VAC 135-50-140, Discrimination in the Provision of Brokerage Services, shall post and maintain a fair housing poster at all their places of business.~~

~~5. Location of posters. All fair housing posters shall be prominently displayed so as to be readily apparent to all persons seeking housing accommodations or seeking to engage in residential real estate-related transactions or brokerage services.~~

~~6. Availability of posters. All persons subject to this part may obtain fair housing posters from the Virginia Department of Professional and Occupational Regulation. A facsimile may be used if the poster and the lettering are equivalent in size and legibility to the poster available from the Department of Professional and Occupational Regulation. Any person who claims to have been injured by a discriminatory housing practice may file a complaint with the administrator pursuant to Part III of this chapter.~~

~~7. A failure to display the fair housing poster as required by this section shall be deemed prima facie evidence of a discriminatory housing practice.~~

~~8. Additional fair housing advertising guidelines are found in 18 VAC 135-50-230 through 18 VAC 135-50-290.~~

18 VAC 135-50-140. Discrimination in the provision of brokerage services.

~~A. It shall be unlawful to deny any person access to or membership or participation in any multiple listing service, real~~

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~~estate brokers' organization or other service, organization, or facility relating to the business of selling or renting dwellings, or to discriminate against any person in the terms or conditions of such access, membership or participation, because of race, color, religion, sex, handicap, familial status, elderliness, or national origin.~~

~~B.~~ Prohibited actions under this section include [, but are not limited to:]

1. Setting different fees for access to or membership in a multiple listing service based on race, color, religion, sex, handicap, familial status, elderliness, or national origin.
2. Denying or limiting benefits accruing to members in a real estate brokers' organization because of race, color, religion, sex, handicap, familial status, elderliness, or national origin.
3. Imposing different standards or criteria for membership in a real estate sales, rental, or exchange organization because of race, color, religion, sex, handicap, familial status, elderliness, or national origin.
4. Establishing geographic boundaries or office location or residence requirements for access to or membership or participation in any multiple listing service, real estate brokers' organization or other service, organization or facility relating to the business of selling or renting dwellings, because of race, color, religion, sex, handicap, familial status, elderliness, or national origin.

18 VAC 135-50-150. [No change from proposed.]

18 VAC 135-50-190. Unlawful practices in the selling, brokering, or appraising of residential real property.

A. It shall be unlawful for any person or other entity whose business includes engaging in the selling, brokering or appraising of residential real property to discriminate against any person in making available such services, or in the performance of such services, because of race, color, religion, sex, handicap, familial status, elderliness, or national origin.

B. For the purposes of this section the term "appraisal" means an estimate or opinion of the value of a specified residential real property made in a business context in connection with the sale, rental, financing or refinancing of a dwelling or in connection with any activity that otherwise affects the availability of a residential real estate-related transaction, whether the appraisal is oral or written, or transmitted formally or informally. The appraisal includes all written comments and other documents submitted as support for the estimate or opinion of value.

~~C. Nothing in this section prohibits a person engaged in the business of making or furnishing appraisals of residential real property from taking into consideration factors other than race, color, religion, sex, handicap, familial status, elderliness, or national origin.~~

~~D.~~ C. Practices which are unlawful under this section include [, but are not limited to,] using an appraisal of residential real property in connection with the sale, rental, or financing of any dwelling where the person knows or reasonably should know that the appraisal improperly takes into consideration race,

color, religion, sex, handicap, familial status, elderliness, or national origin.

18 VAC 135-50-200. General prohibitions against discrimination because of handicap.

A. Definitions. As used in ~~18 VAC 135-50-200~~ *this section* unless a different meaning is plainly required by the context:

"*Accessible*," when used with respect to the public and common use areas of a building containing covered multi-family dwellings, means that the public or common use areas of the building can be approached, entered, and used by individuals with physical handicaps. The phrase "readily accessible to and usable by" is synonymous with "accessible." A public or common use area that complies with the appropriate requirements of ANSI A117.1-1986 or with any other standards adopted as part of regulations promulgated by HUD providing accessibility and usability for physically handicapped people is accessible within the meaning of this section.

"*Accessible route*" means a continuous unobstructed path connecting accessible elements and spaces in a building or within a site that can be negotiated by a person with a severe disability using a wheelchair and that is also safe for and usable by people with other disabilities. Interior accessible routes may include corridors, floors, ramps, elevators and lifts. Exterior accessible routes may include parking access aisles, curb ramps, walks, ramps and lifts. A route that complies with the appropriate requirements of ANSI A117.1-1986, or with any other standards adopted as part of regulations promulgated by HUD, is an "accessible route."

"*ANSI A117.1*" means the American National Standard for buildings and facilities providing accessibility and usability for physically handicapped people. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from American National Standards Institute, Inc., 1430 Broadway, New York, New York 10018.

"*Building*" means a structure, facility or portion thereof that contains or serves one or more dwelling units.

"*Building entrance on an accessible route*" means an accessible entrance to a building that is connected by an accessible route to public transportation stops, to accessible parking and passenger loading zones, or to public streets or sidewalks, if available. A building entrance that complies with ANSI A117.1 or a comparable standard complies with the requirements of this paragraph.

"*Common use areas*" shall include [, but not be limited to,] rooms, spaces, or elements inside or outside of a building which are not part of the dwelling unit and which are made available for the use of residents of a building or the guests thereof. These areas include hallways, lounges, lobbies, laundry rooms, refuse rooms, mailrooms, recreational areas and passageways among and between buildings.

"*Controlled substance*" means any drug or other substance, ~~or immediate precursor included in the definition in § 102 of the Controlled Substances Act (21 U.S.C. 802) as defined in Virginia or federal law.~~

~~"Covered multi-family dwellings" means buildings consisting of four or more dwelling units if such buildings have one or more elevators, and ground floor dwellings units in other buildings consisting of four or more dwelling units.~~

"Dwelling unit" means a single unit of residence for a family or one or more persons. Examples of dwelling units include: a single family home; an apartment unit within an apartment building; and in other types of dwellings in which sleeping accommodations are provided but toileting or cooking facilities are shared by occupants of more than one room or portion of the dwelling, rooms in which people sleep. Examples of the latter include dormitory rooms and sleeping accommodations in shelters intended for occupancy as a residence for homeless persons.

"Entrance" means any access point to a building or portion of a building used by residents for the purpose of entering.

"Exterior" means all areas of the premises outside of an individual dwelling unit.

"First occupancy" means a building that has never before been used for any purpose.

"Ground floor" means a floor of a building with a building entrance on an accessible route. A building may have more than one ground floor.

~~"Handicap" means, with respect to a person, a physical or mental impairment which substantially limits one or more major life activities; a medical or psychological record of such an impairment; or being regarded as having such an impairment. This term does not include current, illegal use of or addiction to a controlled substance as defined in Virginia or federal law. For purposes of this part, an individual shall not be considered to have a handicap solely because that individual is a transvestite.~~

As used in this definition:

~~"Physical or mental impairment" includes:~~

~~1. Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or~~

~~2. Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, Human Immunodeficiency Virus infection, mental retardation, emotional illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance) and alcoholism.~~

~~"Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.~~

[The following terms, as used in the definition of "handicap" contained in § 36-96.1:1 of the Code of Virginia, shall mean:

"Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

"Is regarded as having an impairment" means:

1. Has a physical or mental impairment that does not substantially limit one or more major life activities but that is treated by another person as constituting such a limitation;

2. Has a physical or mental impairment that substantially limits one or more major life activities only as a result of the attitudes of other toward such impairment; or

3. Has none of the impairments defined in "physical or mental impairment" but is treated by another person as having such an impairment.]

"Interior" means the spaces, parts, components or elements of an individual dwelling unit.

"Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

"Modification" means any change to the public or common use areas of a building or any change to a dwelling unit.

"Physical or mental impairment" includes:

1. Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or

2. Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes [, but is not limited to,] such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, Human Immunodeficiency Virus infection, mental retardation, emotional illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance) and alcoholism.

"Premises" means the interior or exterior spaces, parts, components or elements of a building, including individual dwelling units and the public and common use areas of a building.

"Public use areas" means interior or exterior rooms or spaces of a building that are made available to the general public. Public use may be provided at a building that is privately or publicly owned.

"Site" means a parcel of land bounded by a property line or a designated portion of a public right of way.

~~"Standard for Accessibility and Usability for Physically Handicapped People" Compliance with the appropriate~~

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~~requirements of the American National Standard for building and facilities commonly cited as "ANSI A117.1" or with any other standard adopted as part of regulations promulgated by HUD providing accessibility and usability for physically handicapped people.~~

B. General prohibitions against discrimination because of handicap.

~~1. It shall be unlawful to discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of:~~

- ~~a. That buyer or renter;~~
- ~~b. A person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or~~
- ~~c. Any person associated with that person.~~

~~2. It shall be unlawful to discriminate against any person in the terms, conditions, or privileges of the sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a handicap of:~~

- ~~a. That buyer or renter;~~
- ~~b. A person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or~~
- ~~c. Any person associated with that person.~~

~~3. [4.] It shall be unlawful to make an inquiry to determine whether an applicant for a dwelling, a person intending to reside in that dwelling after it is so sold, rented or made available, or any person associated with that person, has a handicap or to make inquiry as to the nature or severity of a handicap of such a person. However, this subdivision does not prohibit the following inquiries, provided these inquiries are made of all applicants, whether or not they have handicaps:~~

~~[a. 1.] Inquiry into an applicant's ability to meet the requirements of ownership or tenancy;~~

~~[b. 2. Inquiry to determine whether an applicant is qualified for a dwelling available only to persons with handicaps or to persons with a particular type of handicap;~~

~~[c. 3. Inquiry to determine whether an applicant for a dwelling is qualified for a priority available to persons with handicaps or to persons with a particular type of handicap;~~

~~[d. 4. Inquiring whether an applicant for a dwelling is a current illegal abuser or addict of a controlled substance;~~

~~[e. 5. Inquiring whether an applicant has been convicted of the illegal manufacture or distribution of a controlled substance.~~

~~4. [2. Nothing in] 18 VAC 135-50-200 B [this subsection requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or themselves, or whose tenancy would result in substantial physical damage to the property of others.]~~

~~5. Housing cannot be denied because of current, illegal use of or addiction to a controlled substance which is not on the~~

~~federal list of controlled substances, even if it is on the Virginia list of controlled substances.~~

C. Reasonable modifications of existing premises.

1. It shall be unlawful for any person to refuse to permit, at the expense of a handicapped person, reasonable modifications of existing premises, occupied or to be occupied by a handicapped person, if the proposed modifications may be necessary to afford the handicapped person full enjoyment of the premises of a dwelling. In the case of a rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted. The landlord may not increase for handicapped persons any customarily required security deposit. However, where it is necessary in order to ensure with reasonable certainty that funds will be available to pay for the restorations at the end of the tenancy, the landlord may negotiate as part of such a restoration agreement a provision requiring that the tenant pay into an interest bearing escrow account, over a reasonable period, a reasonable amount of money not to exceed the cost of the restorations. The interest in any such account shall accrue to the benefit of the tenant.

2. A landlord may condition permission for a modification on the renter providing a reasonable description of the proposed modifications as well as reasonable assurances that the work will be done in a workmanlike manner and that any required building permits will be obtained.

[D. Reasonable accommodations. It shall be unlawful for any person to refuse to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling unit, including public and common use areas.]

[E. ~~D.~~] Design and construction requirements. 4. Covered multi-family dwellings for first occupancy after March 13, 1991, shall be designed and constructed to have at least one building entrance on an accessible route unless it is impractical to do so because of the terrain or unusual characteristics of the site. ~~For purposes of this section, a covered multi-family dwelling shall be deemed to be designed and constructed for first occupancy on or before March 13, 1991, if they are occupied by that date or if the last building permit or renewal thereof for the covered multi-family dwellings is issued by a state, county or local government on or before June 15, 1990.~~ The burden of establishing impracticality because of terrain or unusual site characteristics is on the person or persons who designed or constructed the housing facility.

~~2. All covered multi-family dwellings for first occupancy after March 13, 1991, with a building entrance on an accessible route shall be designed and constructed in such a manner that:~~

- ~~a. The public and common use areas are readily accessible to and usable by handicapped persons;~~

~~b. All the doors designed to allow passage into and within all premises are sufficiently wide to allow passage by handicapped persons in wheelchairs; and~~

~~e. All premises within covered multi-family dwelling units contain the following features of adaptable design:~~

~~(1) An accessible route into and through the covered dwelling unit;~~

~~(2) Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;~~

~~(3) Reinforcements in bathroom walls to allow later installation of grab bars around the toilet, tub, shower, stall and shower seat, where such facilities are provided; and~~

~~(4) Usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.~~

~~3. Compliance with the appropriate requirements of ANSI A117.1-1986, or with any other standards adopted as part of regulations promulgated by HUD providing accessibility and usability for physically handicapped people, suffices to satisfy the requirements of subdivision 2 c of this subsection.~~

18 VAC 135-50-210 through 18 VAC 135-50-217. [No change from proposed.]

18 VAC 135-50-220. Interference, coercion or intimidation.

A. This section provides the board's interpretation of the conduct that is unlawful under § 36-96.5 of the Virginia Fair Housing Law.

~~B. It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of that person having exercised or enjoyed, or on account of that person having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by the Virginia Fair Housing Law and these regulations.~~

~~C. B. Conduct made unlawful under this section includes [, but is not limited to,] the following:~~

~~1. Coercing a person, either orally, in writing, or by other means, to deny or limit the benefits provided that person in connection with the sale or rental of a dwelling or in connection with a residential real estate-related transaction because of race, color, religion, sex, handicap, familial status, elderliness, or national origin.~~

~~2. Threatening, intimidating or interfering with persons in their enjoyment of a dwelling because of the race, color, religion, sex, handicap, familial status, elderliness, or national origin of such persons, or of visitors or associates of such persons.~~

~~3. 2. Threatening an employee or agent with dismissal or an adverse employment action, or taking such adverse employment action, for any effort to assist a person seeking access to the sale or rental of a dwelling or seeking access to any residential real estate-related transaction, because of the race, color, religion, sex, handicap, familial status,~~

~~elderliness, or national origin of that person or of any person associated with that person.~~

~~4. 3. Intimidating or threatening any person because that person is engaging in activities designed to make other persons aware of, or encouraging such other persons to exercise, rights granted or protected by this part.~~

~~5. 4. Retaliating against any person because that person has made a complaint, testified, assisted, or participated in any manner in a proceeding under the fair housing law. These regulations also describe the matters the board will review in evaluating compliance with the fair housing law in connection with investigations of complaints alleging discriminatory housing practices involving advertising.~~

18 VAC 135-50-230 through 18 VAC 135-50-290. [No change from proposed.]

18 VAC 135-50-300. Submission of information to file a complaint.

A. The administrator or his designee will receive *complaint* information concerning alleged discriminatory housing practices from any person. [Where the information constitutes a complaint within the meaning of the fair housing law and these regulations and is furnished by an aggrieved person, a complaint will be considered filed in accordance with 18 VAC 135-50-350. Where additional information is required for the purpose of perfecting a complaint under the law, the administrator or his designee will advise what additional information is needed and will provide appropriate assistance in the filing of the complaint.]

B. ~~The~~ *Complaint* information may also be made available to any appropriate federal, state or local agency having an interest in the matter. In making available such information, steps will be taken to protect the confidentiality of any informant or complainant where desired by the informant or complainant.

[C. The administrator or his designee may counsel with an aggrieved party about the facts and circumstances which constitute the alleged discriminatory housing practices. If the facts and circumstances do not constitute discriminatory housing practices, the administrator or his designee shall so advise the aggrieved party. If the facts and circumstances constitute alleged discriminatory housing practices, the administrator or his designee shall assist the aggrieved party in perfecting a complaint.]

18 VAC 135-50-330. [Filing a complaint. ~~(Repealed.)~~]

~~A. Aggrieved persons may file complaints in person with, or by mail, to the administrator or his designee on a form furnished by the board.~~

~~B. [Aggrieved persons may provide information to be contained in a complaint by telephone to] personnel in the [fair housing office staff]. Personnel [Staff in the fair housing office will reduce information provided by telephone to writing on the prescribed complaint form and send the form to the aggrieved person to be signed and affirmed in accordance with 18 VAC 135-50-340 A.]~~

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18 VAC 135-50-350. Date of filing of a complaint.

[A. Except as provided in subsection B of this section, a complaint is filed when it is received by the board or dual filed with the federal government in a form that reasonably meets the standards of 18 VAC 135-50-340.

B. The administrator may determine that a complaint is filed for the purposes of the one-year period for filing of complaints upon submission of written information (including information provided by telephone and reduced to writing by an employee of the board) identifying the parties and describing generally the alleged discriminatory housing practice.

C.] Where a complaint alleges a discriminatory housing practice that is continuing, as manifested in a number of incidents of such conduct, the complaint will be timely if filed within one year of the last alleged occurrence of that practice.

18 VAC 135-50-390. [No change from proposed.]

18 VAC 135-50-400. [No change from proposed.]

18 VAC 135-50-420. Conduct of investigation.

A. In conducting investigations under these regulations, the voluntary cooperation of all persons will be sought to obtain access to premises, records, documents, individuals, and other possible sources of information; to examine, record, and copy necessary materials; and to take and record testimony or statements of persons reasonably necessary for the furtherance of the investigation.

B. The administrator [and the respondent may conduct discovery in aid of the investigation by the same methods and to the same extent that parties may conduct discovery in a court of law.] ~~in an administrative proceeding under the Virginia Fair Housing Law, except that~~ [The administrator] *or his designee*, on behalf of the board, shall [*also*] have the power to issue subpoenas described under the law, in support of the investigation.

18 VAC 135-50-440. [No change from proposed.]

18 VAC 135-50-450. Final investigative report.

~~A.~~ At the end of each investigation under this article, the administrator or his designee will prepare a final investigative report. The investigative report will contain: ~~1.~~ the names and dates of contacts with witnesses, except that the report will not disclose the names of witnesses who request anonymity. The board, however, may be required to disclose the names of such witnesses in the course of a civil action under the fair housing law;

~~2.~~ A summary and the dates of correspondence and other contacts with the aggrieved person and the respondent;

~~3.~~ A summary description of other pertinent records;

~~4.~~ A summary of witness statements; and

~~5.~~ Answers to interrogatories.

~~B.~~ A final investigative report may be amended at any time, if additional evidence is discovered.

~~C.~~ [Notwithstanding the prohibitions and requirements with respect to disclosure of information contained in

18 VAC 135-50-510, the administrator will make information derived from an investigation, including the final investigative report, available to the aggrieved person and the respondent. Following the completion of an investigation, the administrator shall notify the aggrieved person and the respondent that the final investigative report is complete and will be provided upon request.]

Article 4.

Conciliation Procedures.

18 VAC 135-50-460. [Conciliation process. ~~(Repealed.)~~]

~~A.~~ During the period beginning with the filing of the complaint and ending with the filing of a charge or the dismissal of the complaint, the administrator or his designee will, to the extent feasible, attempt to conciliate the complaint.

~~B.~~ [In conciliating a complaint, the administrator will attempt to achieve a just resolution of the complaint and to obtain assurances that the respondent will satisfactorily remedy any violations of the rights of the aggrieved person, and take such action as will assure the elimination of discriminatory housing practices, or the prevention of their occurrence, in the future.]

18 VAC 135-50-470. [No change from proposed.]

18 VAC 135-50-510. ~~Prohibition and requirements for Disclosure of information obtained during conciliation.~~

[A. Except as provided in subsection B of this section and 18 VAC 135-50-450 C, nothing that is said or done in the course of conciliation under this article may be made public or used as evidence in subsequent civil actions under the Virginia Fair Housing Law or this chapter without the written consent of the persons concerned.

B.] Conciliation agreements shall be made public, unless the aggrieved person and respondent request nondisclosure and the ~~administrator~~ board determines that disclosure is not required to further the purposes of the fair housing law. Notwithstanding a determination that disclosure of a conciliation agreement is not required, the ~~administrator~~ board may publish tabulated descriptions of the results of all conciliation efforts.

Article 5.

~~Reasonable Cause Determination and Issuance of a Charge.~~

18 VAC 135-50-530. [Reasonable cause determination. ~~(Repealed.)~~]

[A.] ~~If a conciliation agreement has not been executed by the complainant and the respondent, the administrator, on behalf of the board, within the time limits set forth in 18 VAC 135-50-560, shall determine whether, based on the totality of the factual circumstance known at the time of the decision, reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur.~~ [The reasonable cause determination will be based solely on the facts concerning the alleged discriminatory housing practice, provided by complainant and respondent and otherwise disclosed during the investigation. In making the reasonable cause determination, the board shall consider whether the facts concerning the alleged discriminatory

housing practice are sufficient to warrant the initiation of a civil action in the appropriate state court.

B. In all cases not involving the legality of local zoning or land use laws or ordinances:

1. If the board determines that reasonable cause exists, the board will issue a charge under § 36-96.14 of the fair housing law and these regulations on behalf of the aggrieved person, and shall notify the aggrieved person and the respondent of this determination by certified mail or personal service.

2. If a no reasonable cause determination is made, the board shall: Issue a short and plain written statement of the facts upon which the no reasonable cause determination was based; dismiss the complaint; notify the aggrieved person and the respondent of the dismissal (including the written statement of facts) in writing within 30 days of such determination by certified mail or personal service; and make public disclosure of the dismissal.] Public disclosure of the dismissal shall be by issuance of a press release, except that the respondent may request that no release be made. Notwithstanding a respondent's request that no press release be issued, the fact of the dismissal, including the names of the parties, shall be public information available on request.

18 VAC 135-50-560 through 18 VAC 135-50-590. [No change from proposed.]

VA.R. Doc. No. R01-55; Filed July 22, 2003, 11:54 a.m.

Title of Regulation: 18 VAC 135-60. Common Interest Community Management Information Fund Regulations (adding 18 VAC 135-60-10 through 18 VAC 135-60-60).

Statutory Authority: § 55-530 of the Code of Virginia.

Effective Date: September 10, 2003.

Agency Contact: Karen W. O'Neal, Deputy Director, Department of Professional and Occupational Regulation, 3600 W. Broad Street, Richmond, VA 23230, telephone (804) 367-8537, FAX (804) 367-2475 or e-mail oneal@dpor.state.va.us.

Summary:

The action implements the provisions of the Common Interest Community Management Information Fund (§ 55-528 et seq.) of the Code of Virginia. The Act requires the payment of a fee into the Fund by Condominium, Cooperative, and Property Owners' Associations to be used to promote the improvement and more efficient operation of common interest communities through research and education.

Summary of Public Comments and Agency's Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

REGISTRAR'S NOTICE: The proposed regulation was adopted as published in 18:26 VA.R. 3800-3802 September 9,

2002, with the changes identified below. Pursuant to § 2.2-4031 A of the Code of Virginia, the adopted regulation is not published at length; however, the sections that have changed since publication of the proposed are set out.

CHAPTER 60. COMMON INTEREST COMMUNITY MANAGEMENT INFORMATION FUND REGULATIONS.

18 VAC 135-60-10 through 18 VAC 135-60-40. [No change from proposed.]

18 VAC 135-60-50. Annual report by property owners' association.

Within the meaning and intent of § 55-516.1 of the Code of Virginia [:4. ,] within 30 days of the [first anniversary of the] creation of the association, and every year thereafter, [an the] association shall file an annual report with the board.

[2. An association may select the month when it files its annual report with the State Corporation Commission to file the association annual report with the board.]

18 VAC 135-60-60. [No change from proposed.]

FORMS [No change from proposed.]

VA.R. Doc. No. R02-9; Filed July 23, 2003, 11:51 a.m.

TITLE 20. PUBLIC UTILITIES AND TELECOMMUNICATIONS

STATE CORPORATION COMMISSION

Division of Energy Regulation

REGISTRAR'S NOTICE: The State Corporation Commission is exempt from the Administrative Process Act in accordance with § 2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.

Title of Regulation: 20 VAC 5-312. Rules Governing Retail Access to Competitive Energy Services (amending 20 VAC 5-312-120).

Statutory Authority: §§ 12.1-13 and 56-581.1 of the Code of Virginia.

Effective Date: January 1, 2004.

Agency Contact: W. Timothy Lough, Special Projects Engineer, Division of Energy Regulation, State Corporation Commission, P.O. Box 1197, Richmond, Virginia 23218, telephone (804) 371-9590, FAX (804) 371-9350, toll-free (800) 552-7945 or e-mail tough@scc.state.va.us.

Summary:

The amendments ensure the availability of financial ownership of electricity meters to enhance the development

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of a competitive electricity market in Virginia. The rules require the local distribution company to provide the choice of meter ownership to large industrial and large commercial customers. The rules address meter criteria, local distribution company responsibilities, meter access, and how the local distribution company shall respond to requests for meter ownership.

Summary of Public Comments and Agency's Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

AT RICHMOND, July 11, 2003

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

CASE NO. PUE-2001-00298

Ex Parte: In the matter of
establishing rules and regulations
pursuant to the Virginia Electric
Utility Restructuring Act for
competitive metering services

ORDER ADOPTING RULES

Pursuant to the provisions of the Virginia Electric Utility Restructuring Act, § 56-576 et seq. ("Act") of the Code of Virginia, specifically, § 56-581.1, and the Commission's December 10, 2002, Order issued in this docket, the Staff filed a report on February 25, 2003 ("Report"), with the State Corporation Commission ("Commission") presenting proposed rules for competitive electricity metering relating to financial ownership of electricity meters for large commercial and large industrial customers.

In its Report, Staff states that the proposed rules specifically require the local distribution company to provide the choice of meter ownership to large industrial and large commercial customers. Staff indicates that the rules address the definition of "large" customers, meter criteria, local distribution company responsibilities, meter access, and how the local distribution company shall respond to requests for meter ownership. Staff indicates that the proposed rules on customer meter ownership follow rules previously adopted to implement competitive metering services on January 1, 2003, by providing for meter functionality choices and data access choices, including access to meter data on a near real-time, on-command basis. Staff states in its Report that any additional elements of metering services would remain the responsibility of the local distribution company until such time as the Commission determines the competitive provision of such services to be in the public interest, in accordance with the nine statutory implementation criteria set forth in Va. Code § 56-581.1 E. Staff further states that in developing the proposed electricity metering rules for its Report, the Staff relied primarily on the guidelines of the Commission's Order of December 10, 2002, as well as input from the competitive metering work group during meetings on July 31, 2002, and February 12, 2003. Staff recommends in its Report that the

rules should be adopted and effective no sooner than six months after the final rules are published in the Virginia Register, in order that the affected local distribution companies have sufficient time to address the impacts on billing and meter tracking systems and to develop their tariffs for 2004.

On March 3, 2003, the Commission issued an Order Inviting Comments ("Order") providing interested parties an opportunity to comment and/or request a hearing on Staff's proposed competitive metering rules.

Comments on the Staff Report and proposed competitive metering rules were filed by New Era Energy, Inc. ("New Era"), Appalachian Power Company d/b/a American Electric Power-Virginia ("AEP"), Allegheny Power ("AP"), and Dominion Virginia Power ("DVP"). None of the parties requested a hearing on, or proposed revisions to, the proposed rules.

Some parties filed comments on issues not related to the proposed rules. New Era restated its belief that it would be appropriate for the Commission to conduct a study of price-signaling technologies. New Era clarified that its recommendation did not include a study of cost effectiveness of demand control. New Era states that the objective of the proposed study was far narrower than interpreted by Staff; the objective of the study was to explore whether it might be feasible to adopt one or more standards and/or to consider how to support the emergence of real-time signaling. New Era further recommended in its comments that the Commission request the appropriate authority and funding authorization to take a pro-active position toward promoting the emergence of cost-effective energy management in Virginia.

In its comments, among other things, DVP stated that the study of voluntary pilot programs for residential and small commercial customers should be deferred to such time as the LTF requests the Commission to convene a work group to study this and other energy management options.

As we have noted in previous orders, it is apparent that the market for competitive metering services is in the early stages of development. We directed the Staff to prepare proposed rules for meter ownership by large industrial and large commercial customers, as we found that to be the next appropriate step to take in the development of competitive metering services. The parties who filed comments on Staff's proposed rules did not recommend any revisions to the rules as written. Accordingly, we adopt in full Staff's proposed rules on customer meter ownership by large industrial and large commercial customers.

In its comments, New Era reiterates its request for the Commission to conduct a study of price-signaling technologies, and initiate funding efforts to do so. While we continue to believe that access to timely meter data may boost the development of the competitive generation market, we believe, however, at this time, that the competitive market should drive these technologies. We note, as well, that in the 2003 General Assembly session, the LTF deferred action on a proposal to study short-term and long-term approaches to

encourage voluntary and cost-effective energy management options to Virginia consumers.

We have previously directed the competitive metering work group to continue to meet to address additional implementation efforts. The development of the competitive metering market is intrinsically tied to advancements in metering technologies. In that regard, we have directed the Staff to study expanded or voluntary Time-Of-Use programs. We believe that the Staff with the assistance of the working group should continue these efforts, and that these efforts should be expanded to include looking at new meter technology. Such investigation could include examining the types of meters the utilities use. We want to seek to ensure that the technologies being used do not block the use of price signals or retard the development of a competitive metering market. We will direct the Staff and the work group to investigate these issues, and the Staff to file a report on or before May 1, 2004, providing the results of its investigation.

We take note of Staff's recommendation, which was supported by DVP in its comments,¹ that the rules should be adopted and effective no sooner than six months after the final rules are published in the Virginia Register, to provide the utilities sufficient time to address the impacts on billing and meter tracking systems and to develop their tariffs for 2004. We find, however, that if we provide timely service of this Order and the adopted rules on all affected utilities, those utilities should have sufficient time for system impacts to be addressed in order that the rules may become effective on January 1, 2004.

Accordingly, IT IS ORDERED THAT:

- (1) Regulations for competitive metering services are hereby adopted as set forth in Sections F through H, 20 VAC 5-312-20, of Attachment A to this Order.
- (2) On or before August 30, 2003, each investor-owned distribution electric utility in Virginia shall file tariffs for competitive metering services reflecting the adopted regulations.
- (3) A copy of this Order and the rules adopted herein shall be forwarded promptly for publication in the Virginia Register of Regulations. The rules shall be effective as of January 1, 2004.
- (4) The Commission Staff shall proceed with the assistance of the work group to address those issues identified in this Order, issues we have identified in previous orders, as well as issues that arise during the efforts of the work group.
- (5) On or before May 1, 2004, the Commission Staff shall file a report providing the results of its investigation of additional implementation efforts, including those issues identified in this Order.
- (6) This matter shall be continued for further proceedings consistent with this Order.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to all persons on the official Service List in this

¹ DVP Comments at 5.

matter. The Service List is available from the Clerk of the State Corporation Commission, c/o Document Control Center, 1300 East Main Street, First Floor, Tyler Building, Richmond, Virginia 23219.

REGISTRAR'S NOTICE: The proposed regulation was adopted as published in 19:14 VA.R. 2084-2085 March 24, 2003, without change. Therefore, pursuant to § 2.2-4031 A of the Code of Virginia, the text of the final regulation is not set out.

VA.R. Doc. No. R03-137; Filed July 15, 2003, 11:22 a.m.

◆ ————— ◆
TITLE 22. SOCIAL SERVICES

STATE BOARD OF SOCIAL SERVICES

Title of Regulation: 22 VAC 40-11. **Public Participation Guidelines (amending 22 VAC 40-11-10, 22 VAC 40-11-30, 22 VAC 40-11-40, and 22 VAC 40-11-50).**

Statutory Authority: §§ 2.2-4007 and 63.2-217 of the Code of Virginia.

Effective Date: September 10, 2003.

Summary:

This regulation sets forth the procedures the State Board of Social Services uses to obtain public input when developing, revising or repealing a regulation. This regulation covers the following topics: petitions from interested parties, solicitation of input, public hearings, and withdrawal of regulations. The amendments provide for electronic transmission of information and incorporate recent statutory changes.

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

REGISTRAR'S NOTICE: The proposed regulation was adopted as published in 19:11 VA.R. 1622-1624 February 10, 2003, with the changes identified below. Pursuant to § 2.2-4031 A of the Code of Virginia, the adopted regulation is not published at length; however, the sections that have changed since publication of the proposed are set out.

**PART I.
GENERAL PROVISIONS.**

22 VAC 40-11-10 through 22 VAC 40-11-40. [No change from proposed.]

22 VAC 40-11-50. Solicitation of input.

A. Each division of the department shall establish and maintain ~~a list or~~ lists consisting of persons expressing an interest in the adoption, amendment or repeal of regulations under its administration, management or supervision. Persons may request the addition of their name and address to the ~~list~~ lists at any time. *Persons who elect to be included on an electronic mailing list may also request that all mailings be sent in hard copy.* The lists will be updated as additional

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interested parties are identified. Deletions [~~will~~ may] be made when *either regular or electronic mail is returned undeliverable or a lack of interest is determined by the division as a result of periodic contact initiated by the division. [Deletions made as the result of returned electronic mail will only be made after two or more messages are returned over a period of at least 12 months.]*

B. The department may form an ad hoc advisory group or utilize a standing advisory committee to assist in the drafting, formation or review of a proposal when expertise is necessary to address a specific regulatory interest or issue, or when persons register an interest in the subject of the regulation and in working with the department.

C. Whenever a division identifies a need for the adoption, amendment or repeal of regulations under its administration, management or supervision, it may commence the regulation adoption process according to these procedures.

D. *Upon approval by the board*, the department shall issue a Notice of Intended Regulatory Action (NOIRA) which describes the subject matter and intent of the planned regulation for all regulatory proposals in accordance with the Administrative Process Act. The NOIRA shall state whether the agency intends to hold a public hearing.

E. The commissioner shall disseminate the NOIRA to the public by:

1. Distribution to the Registrar of Regulations for publication in The Virginia Register, and
2. Distribution ~~by mail~~ to parties on the ~~list~~ lists established under subsection A of this section *by mail or electronic transmission as chosen by the parties.*

F. The agency shall consider public comment in drafting proposed regulations *and the department shall make provisions for receiving comment by regular mail, the Internet, facsimile and other electronic means.*

G. Upon approval by the board of the proposed regulations prepared by the department, the department shall solicit public comment through:

1. Distribution to the Registrar of Regulations for publication in The Virginia Register, *and*
2. ~~Publication of a Notice of Comment Period in a newspaper of general circulation published at the state capital and such other newspapers as the department may deem appropriate, and~~
3. 2. Distribution of a notice of comment ~~by mail~~ period to persons on the lists established under subsection A of this section.

H. *At the discretion of the board, the department may solicit public comment on a proposed regulation through publication of a notice in any newspaper as determined by the board. Any notice published shall comply with the provisions of subsection F of § 2.2-4007 of the Code of Virginia.*

I. *The board shall consider public comment in approving final regulations. The department shall make provisions for receiving comment on the proposed regulation by regular*

mail, the Internet, facsimile and other electronic means. At the conclusion of the public comment period, the department shall provide that comment to the board.

VA.R. Doc. No. R02-302; Filed July 22, 2003, 11:09 a.m.

* * * * *

Title of Regulation: **22 VAC 40-375. Economic and Employment Improvement Program for Disadvantaged Persons (adding 22 VAC 40-375-10 through 22 VAC 40-375-60).**

Statutory Authority: § 63.2-217 of the Code of Virginia.

Effective Date: September 10, 2003.

Agency Contact: Faye Palmer, Manager, Job Readiness and Employment, Department of Social Services, 730 East Broad Street, Richmond, VA 23219, telephone (804) 692-1065, FAX (804) 225-2202 or e-mail afp900@email1.dss.state.va.us.

Summary:

The regulation establishes the Economic and Employment Improvement Program for Disadvantaged Persons. The regulation designates the types of projects eligible to receive grant awards for the program and additional provisions establishing criteria for projects designed to serve certain hard-to-employ persons. The 2003 General Assembly removed the statutory language establishing the Economic and Employment Improvement Program (Chapter 428, 2003 Acts of Assembly). Therefore, the regulation has been amended to remove all references to the sections of the Code that had defined the program. The regulation now includes language defining the program that was originally just referenced in the Code. In addition, the definition of "hard-to-employ" has been changed to conform to the definition found in other employment programs within the department.

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

CHAPTER 375.
ECONOMIC AND EMPLOYMENT IMPROVEMENT
PROGRAM FOR DISADVANTAGED PERSONS.

22 VAC 40-375-10. Definitions.

The following words and terms when used in this regulation [will shall] have the following meanings unless the context clearly indicates otherwise:

"Chronically unemployed" means an individual who performs no work and earns no wages for 12 months or longer.

"Custodial parent" means the biological, adoptive or stepparent with whom the child resides.

["Demographics" means the population distribution of urban-versus-rural areas/regions.]

"Department" means the Virginia Department of Social Services.

"Disadvantaged" means individuals [~~other than individuals with disabilities~~] who have economic or academic

disadvantages and need assistance and services to enable them to succeed in career development and economic independence.

"Hard-to-employ" means [~~a public assistance recipient or a person returning to the community from a federal or state correctional facility~~ individuals who face barriers to employment such as substance abuse, physical disabilities, domestic violence, learning disabilities, mental health issues, language barriers, chronic health problems and criminal convictions].

"Minor child" means a child who is under the age of 18, or if 18 and not yet 19, is enrolled and attending a secondary school or vocational/technical school of secondary equivalency and is expected to complete the high school or vocational/technical program prior to or in the month he attains age 19.

"Participant" means an individual who has been determined to be eligible to receive services under the Economic and Employment Improvement Program for Disadvantaged Persons and who is enrolled and receiving services under this program.

"Temporary Assistance for Needy Families (TANF)" means the program administered by the Virginia Department of Social Services and based on Title IV-A of the Social Security Act as amended by the Personal Responsibility and Work Opportunity Reconciliation [ACT Act] (PRWORA) and § 63.2-600 et seq. of the Code of Virginia.

2 VAC 40-375-20. Program description.

A. In order to improve the employability of and provide assistance to disadvantaged, certain hard-to-employ and chronically unemployed persons through education and job skills programs:

1. The department [~~must~~ may] administer the Economic and Employment Improvement Program for Disadvantaged Persons program [pursuant to § 63.2-700 et seq. of the Code of Virginia].
2. The program is designed to assist eligible participants to secure employment and move from minimum wage jobs to employment or college, or both, that will facilitate career development and economic independence.

B. Grant program project awards.

[~~1. The Grant Awards Committee, composed of nine members pursuant to § 63.2-702 A of the Code of Virginia, makes grant awards pursuant to § 63.2-702 B of the Code of Virginia and program funding availability.~~

~~2. 1.] No more than 10 grants will be awarded [pursuant to § 63.2-702 C of the Code of Virginia].~~

[~~3. 2.] Of any grant amount awarded for the program, no more than 15% of the total award may be used for administrative costs.~~

[~~4. 3.] Grant applicants may include, but are not limited to, local workforce investment boards, local departments of social services, public and private colleges and universities, disability community organizations, community action~~

agencies, and private entities such as community development corporations, both nonprofit and profit.

[~~5. 4.] Funds will be equally distributed geographically [and demographically] throughout the Commonwealth [taking into consideration demographics].~~

[~~6. The Grant Awards Committee can renew grants 5. Grants can be renewed] for a period not to exceed 12 months upon satisfactory evaluation of the program project performance.~~

22 VAC 40-375-30. Grant applicant eligibility.

[~~Grant applicants must satisfy the eligibility criteria pursuant to § 63.2-702 C of the Code of Virginia. Priority for awarding such grants shall be given to those whose proposals will benefit individuals satisfying the following criteria:~~

1. Historically underrepresented in Virginia institutions of higher education, and in management and at administrative levels in the business community;
2. Residing in counties, cities, and towns with high local stress indicators and in economically depressed regions of the Commonwealth;
3. Disproportionately represented in the workforce in minimum wage jobs and occupations requiring minimum education, training, and skills;
4. Ineligible to continue to receive public assistance under state and federal laws;
5. Eligible to participate in the Temporary Assistance for Needy Families Program;
6. Returning to the community from state and federal correctional institutions;
7. Chronically unemployed or hard-to-employ;
8. Displaced by technological advances in industry; or
9. Subject to any combination thereof.]

22 VAC 40-375-40. Grantee responsibility.

A. Grantees must operate their programs in accordance with, but not limited to, [~~§ 63.2-702 D of the Code of Virginia~~ the requirements of this regulation]; and

B. Grantees must, through performance outcomes, show that they meet the TANF objective of ending dependency of needy parents by promoting job preparation, work and marriage pursuant to 42 USC §§ 601-619.

22 VAC 40-375-50. Participant eligibility.

In order to be eligible:

1. Participants must have at least one minor child and be either a custodial or noncustodial parent [~~and have an income below 200% of the current federal poverty level as published by the federal Office of Management and Budget~~]; [~~or and~~]
2. Participants must [~~meet other eligibility requirements as determined by the department~~ have an income below 200%

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of the current federal poverty level as published by the federal Office of Management and Budget].

22 VAC 40-375-60. Participant responsibility.

A. Participants in the program that are not participating in the Virginia Initiative for Employment not Welfare are required to work a minimum of eight hours per week in paid employment [pursuant to § 63.2-702 D of the Code of Virginia].

B. Participants are required to comply with the guidelines established by the individual grantees.

VA.R. Doc. No. R02-151; Filed July 22, 2003, 11:10 a.m.

Title of Regulation: **22 VAC 40-685. Virginia Energy Assistance Program -- Home Energy Assistance Program (adding 22 VAC 40-685-10, 22 VAC 40-685-20, and 22 VAC 40-685-30).**

Statutory Authority: §§ 63.2-217 and 63.2-805 of the Code of Virginia.

Effective Date: September 1, 2003.

Agency Contact: Margaret Friedenber, Director of Special Projects, Department of Social Services, 730 E. Broad Street, Richmond, VA 23219, telephone (804) 692-1728, FAX (804) 692-1469 or e-mail mjf900@dcse.dss.state.va.us.

Summary:

The regulation establishes a Home Energy Assistance Program and creates a Home Energy Assistance Fund to assist low-income Virginians in meeting their residential energy needs. This regulation will replace the emergency regulation, which is effective from September 1, 2002, through August 31, 2003.

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

REGISTRAR'S NOTICE: The proposed regulation was adopted as published in 19:11 VA.R. 1624-1628 February 10, 2003, without change. Therefore, pursuant to § 2.2-4031 A of the Code of Virginia, the text of the final regulation is not set out.

VA.R. Doc. No. R02-300; Filed July 9, 2003, 2 p.m.

Title of Regulation: **22 VAC 40-910. General Provisions for Maintaining and Disclosing Confidential Information of Public Assistance, Child Support Enforcement, and Social Services Records (adding 22 VAC 40-910-10 through 22 VAC 40-910-110).**

Statutory Authority: § 63.2-217 of the Code of Virginia.

Effective Date: September 1, 2003.

Agency Contact: Lynette Isbell, Policy and Planning Manager, Department of Social Services, 730 E. Broad Street, Richmond, VA 23219, telephone (804) 692-1821, FAX (804) 692-2425 or e-mail lwi2@dss.state.va.us.

Summary:

This regulation replaces an emergency regulation that expires on August 31, 2003. The regulation establishes separate sections for the confidentiality of public assistance, child support enforcement, and social services programs administered by the Department of Social Services and local departments of social services. Except as provided by federal and state laws and regulations, no records or information concerning applicants for and recipients of public assistance or child support are accessible except for purposes directly connected with the administration of the public assistance and child support enforcement programs. Social services records and information are confidential except that they are accessible to persons having a legitimate interest in accordance with federal and state laws and regulations.

Summary of Public Comments and Agency's Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

REGISTRAR'S NOTICE: The proposed regulation was adopted as published in 19:11 VA.R. 1628-1633 February 10, 2003, with the changes identified below. Pursuant to § 2.2-4031 A of the Code of Virginia, the adopted regulation is not published at length; however, the sections that have changed since publication of the proposed are set out.

CHAPTER 910.

GENERAL PROVISIONS FOR MAINTAINING AND DISCLOSING CONFIDENTIAL INFORMATION OF PUBLIC ASSISTANCE, CHILD SUPPORT ENFORCEMENT, AND SOCIAL SERVICES RECORDS.

22 VAC 40-910-10. [No change from proposed.]

22 VAC 40-910-20. General provisions.

A. Except as otherwise provided in these regulations or consistent with other federal and state laws or regulations, no person shall disclose or use, or authorize, permit or acquiesce to the use of any client information that is directly or indirectly derived from the client records of the department, agency, provider, or the State Board of Social Services. Exceptions to this provision are provided in 22 VAC 40-910-80, 22 VAC 40-910-90 and 22 VAC 40-910-100.

B. Protecting confidential information. All client records, which could disclose the client's identity, are confidential and must be protected in accordance with federal and state laws and regulations. Such client information includes, but is not limited to:

1. Name, address and any types of identification numbers assigned to the client and all individuals for whom the client receives assistance on behalf of, including but not limited to social security number;
2. Public assistance, child support enforcement services, or social services provided to the client;
3. Information received for verifying income and eligibility;
4. Evaluation of the client's confidential information;

5. Social and medical data about the client and all individuals for whom the client receives assistance on behalf of, including diagnoses and past histories of disease or disabilities;

6. Information received from third parties such as an employer; and

7. Information associated with processing and rendering appeals.

C. Ownership of client records.

1. Client records are the property of the department or agency. Employees and agents of the department or agency must protect and preserve such records from dissemination except as provided herein.

2. Only authorized employees and agents may remove client records from the department or agency's premises.

3. The department and agency shall destroy client records pursuant to records retention schedules consistent with federal and state regulations.

D. Disclosure of client information.

1. Consent. As part of the application process for public assistance or social services, the client or legally responsible person must be informed of the need to consent to a third-party release of client information necessary for verifying his eligibility or information provided. Whenever a person or organization that is not performing one or more of the functions delineated in 22 VAC 40-910-80 C or does not have a legitimate interest pursuant to 22 VAC 40-910-100 requests client information, the person or organization must obtain written permission from the client or the legally responsible person for the release of the client information unless one of the conditions delineated in this subsection [exists]. A client's authorization for release of client information obtained by the department, agency or provider also satisfies this requirement.

Client records may be released without the client's written permission under the following conditions:

a. A court of competent jurisdiction has ordered the production of client records and the department, agency or provider does not have sufficient time to notify the client or legally responsible person before responding to the order.

b. For research purposes as provided in 22 VAC 40-910-50.

2. The Commissioner of the Virginia Department of Social Services, the State Board of Social Services and their agents shall have the discretion to release nonidentifying statistical information. A client's written permission is not required in order to release nonidentifying statistical information.

3. The Commissioner of the Virginia Department of Social Services, the State Board of Social Services and their agents do not have to obtain consent from the client to obtain or review client records.

22 VAC 40-910-30. Notification of release of confidential client information.

If one of the conditions in 22 VAC 40-910-20 D 1a is met and consent is not obtained before the release of the client records, the department, agency or provider must [make reasonable efforts to] provide written notification to the client or legally responsible person within five business days after disclosure.

22 VAC 40-910-40 through 22 VAC 40-910-110. [No change from proposed.]

VA.R. Doc. No. R02-301; Filed July 9, 2003, 1:59 p.m.



EMERGENCY REGULATIONS

TITLE 3. ALCOHOLIC BEVERAGES

ALCOHOLIC BEVERAGE CONTROL BOARD

Titles of Regulations: **3 VAC 5-40. Requirements for Product Approval (amending 3 VAC 5-40-20 and 3 VAC 5-40-50).**

3 VAC 5-70. Other Provisions (adding 3 VAC 5-70-220).

Statutory Authority: §§ 4.1-103 and 4.1-112.1 of the Code of Virginia.

Effective Dates: July 10, 2003, through July 9, 2004

Agency Contact: W. Curtis Coleburn III, Chief Operating Officer, Department of Alcoholic Beverage Control, 2901 Hermitage Road, Richmond, VA 23220, telephone (804) 213-4409, FAX (804) 213-4411, or e-mail wccolen@abc.state.va.us.

Preamble:

The Alcoholic Beverage Control Board promulgates these emergency regulations to carry out the mandate of Chapters 1029 and 1030 of the 2003 Acts of Assembly, which allow for the direct shipment of beer and wine to consumers by holders of wine or beer shipper's licenses. The second enactment clause of each act requires the Alcoholic Beverage Control Board to promulgate regulations to implement the provisions of the act within 90 days of enactment. The emergency regulations provide for the application process and recordkeeping and reporting processes for wine or beer shipper's licensees and common carriers approved to deliver shipments from such licensees.

3 VAC 5-40-20. Wines; qualifying procedures; disqualifying factors; samples; exceptions.

A. All wines sold in the Commonwealth shall be first approved by the board as to content, container and label.

1. A certification acceptable to the board or on a form prescribed by the board describing the merchandise may accompany each new brand and type of wine offered for sale in the Commonwealth. A certification fee and a registration fee in such amounts as may be established by the board shall be included with each new certification.

2. In lieu of the aforementioned certification, there shall be submitted a sample and registration and analysis fees in such amounts as may be established by the board; provided, however, that wine already offered for sale by another state with which this Commonwealth has an analysis and certification exchange agreement and wine sold through government stores shall be subject only to a registration fee in such amount as may be established by the board.

3. All wine sold in this Commonwealth shall conform with regulations adopted by the appropriate federal agency, relating to labels, definitions and standards of identity. Applicants shall submit a certified copy of the approval of the label by such federal agency.

4. Subsequent sales under an approved label shall conform to the certification and analysis of the wine originally approved by the board.

5. The board may approve a wine without benefit of a certification or analysis for good cause shown. Good cause includes, but is not limited to, wine which is rare.

B. While not limited thereto, the board shall withhold approval of any wine:

1. Which is an imitation or substandard wine as defined under regulations of the appropriate federal agency;

2. If the alcoholic content exceeds 21% by volume;

3. Which is a wine cocktail containing any ingredient other than wine.

C. While not limited thereto, the board may withhold approval of any label:

1. Which implies or indicates that the product contains spirits;

2. Where the name of a state is used as a designation of the type of wine, but the contents do not conform to the wine standards of that state;

3. Which contains the word "cocktail" without being used in immediate conjunction with the word "wine" in letters of the same dimensions and characteristics, except labels for sherry wine;

4. Which contains the word "fortified" or implies that the contents contain spirits, except that the composition and alcoholic content may be shown if required by regulations of an appropriate federal agency;

5. Which contains any subject matter or illustration of a lewd, obscene or indecent nature;

6. Which contains subject matter designed to induce minors to drink, or is suggestive of the intoxicating effect of wine;

7. Which contains any reference to a game of chance;

8. Which contains any design or statement which is likely to mislead the consumer.

D. A person holding a license as a winery, farm winery or a wine wholesaler shall upon request furnish the board without compensation a reasonable quantity of such brand sold by him for chemical analysis; provided, however, that the board may require recertification of the merchandise involved in lieu of analysis of such a sample. A fee in such amount as may be established by the board shall be included with each recertification.

E. Any wine whose content, label or container does not comply with all requirements of this section shall be exempt therefrom provided that such wine was sold at retail in this Commonwealth as of December 1, 1960, and remains the same in content, label and container. *Any wine sold only by direct shipment to consumers by holders of wine shipper's licenses shall be approved upon compliance with subsection A3 of this section.*

3 VAC 5-40-50. Beer; qualifying procedures; samples; exceptions; disqualifying label factors.

A. Beer sold in the Commonwealth shall be first approved by the board as to content, container and label.

1. A certification acceptable to the board or on a form prescribed by the board describing the merchandise may accompany each new brand and type of beer offered for sale in the Commonwealth. A certification fee and a registration fee in such amounts as may be established by the board shall be included with each new certification.

2. In lieu of the aforementioned certification, there shall be submitted a sample and registration and analysis fees in such amounts as may be established by the board; however, beer offered for sale in another state with which the Commonwealth has an analysis and certification exchange agreement shall be subject only to a registration fee in such amounts as may be established by the board.

3. All beer sold in the Commonwealth shall conform with regulations adopted by the appropriate federal agency, relating to labels, definitions and standards of identity. Applicants shall submit a certified copy of the approval of the label by such federal agency.

4. Subsequent sales under an approved label shall conform to the certification or analysis of the beer originally approved by the board.

B. A brewery licensee or a wholesale beer licensee shall upon request furnish the board without compensation a reasonable quantity of each brand of beer sold by him for chemical analysis; provided, however, that the board may require recertification of the merchandise involved in lieu of analysis of such a sample. A fee in such amount as may be established by the board shall be included with each recertification.

C. Any beer whose contents, label or container does not comply with all requirements of this section shall be exempt therefrom provided that such beer was sold at retail in this Commonwealth as of December 1, 1960, and remains the same in content, label and container. *Any beer sold only by direct shipment to consumers by holders of beer shipper's licenses shall be approved upon compliance with subsection A3 of this section.*

D. While not limited thereto, the board may withhold approval of any label which contains any statement, depiction or reference that:

1. Implies or indicates that the product contains wine or spirits;
2. Implies the product contains above average alcohol for beer;
3. Is suggestive of intoxicating effects;
4. Would tend to induce minors to drink;
5. Would tend to induce persons to consume to excess;
6. Is obscene, lewd or indecent;

7. Implies or indicates that the product is government (federal, state or local) endorsed;

8. Implies the product enhances athletic prowess or implies such by any reference to any athlete, former athlete or athletic team;

9. Implies endorsement of the product by any prominent living person;

10. Makes any humorous or frivolous reference to any intoxicating drink.

3 VAC 5-70-220. Wine or Beer Shipper's Licenses; application process; common carriers; records and reports.

A. Any person or entity qualified for a wine shipper's license or beer shipper's license pursuant to Va. Code § 4.1-112.1 must apply for such license by submitting form 805-52, Application for License. In addition to the application, each applicant shall submit the following attachments:

1. A list of all brands of wine or beer sought to be shipped by the applicant, along with the Board-assigned code numbers for each brand or a copy of the label approval by the appropriate federal agency for any brand not previously approved for sale in Virginia pursuant to 3 VAC 5-40-20 or 3 VAC 5-40-50 that will be sold only through direct shipment to consumers.

2. Except as provided in subsection B of § 4.1-112.1 of the Code of Virginia, if the applicant is not also the brand owner of the brands listed in the application, the applicant shall obtain and submit with the application a dated letter from the brand owner for each brand, addressed to the Supervisor, Tax Management Section, Virginia Department of Alcoholic Beverage Control, indicating the brand owner's consent to the applicant shipping the brand to Virginia consumers.

3. The applicant shall attach a photocopy of its current license as a winery, farm winery, brewery, or alcoholic beverage retailer, issued by the appropriate authority for the location from which shipments will be made.

4. Evidence of the applicant's registration with the Virginia Department of Taxation for the collection of Virginia retail sales tax.

B. Any brewery, winery or farm winery that applies for a shipper's license or consents to the application by any other person, other than a retail off-premises licensee, for a license to ship such brewery's, winery's or farm winery's brands of wine or beer shall notify all wholesale licensees that have been authorized to distribute such brands in Virginia that an application for a shipper's license has been filed. Such notification shall be by a dated letter to each such wholesale licensee, setting forth the brands that wholesaler has been authorized to distribute in Virginia for which a shipper's license has been applied. A copy of each such letter shall be forwarded to the Supervisor, Tax Management Section, by the brewery, winery, or farm winery.

C. Any holder of a wine or beer shipper's license may add or delete brands to be shipped by letter to the Supervisor, Tax

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Management Section, designating the brands to be added or deleted. Any letter adding brands shall be accompanied by any appropriate brand-owner consents or notices to wholesalers as required with an original application.

D. Any brand owner that consents to a holder of a wine shipper's license or beer shipper's license shipping its brands to Virginia consumers may withdraw such consent by a dated letter to the affected wine or beer shipper's licensee. Copies of all such withdrawals shall be forwarded by the brand owner, by certified mail, return receipt requested, to the Supervisor, Tax Management Section. Withdrawals shall become effective upon receipt of the copy by the Tax Management Section, as evidenced by the postmark on the return receipt.

E. Wine shipper's licensees and beer shipper's licensees shall maintain for two years complete and accurate records of all shipments made under the privileges of such licenses, including for each shipment:

1. Number of containers shipped.
2. Volume of each container shipped.
3. Brand of each container shipped.
4. Names and addresses of recipients.
5. Price charged.

The records required by this paragraph shall be made available for inspection and copying by any member of the Board or its special agents upon request.

F. On or before the 15th day of each month, each wine shipper's licensee or beer shipper's licensee shall file with the Supervisor, Tax Management Section a report of activity for the previous calendar month. Such report shall include:

1. Whether any shipments were made during the month.
2. If shipments were made, the following information for each shipment:
 - a. Number of containers shipped.
 - b. Volume of each container shipped.
 - c. Brand of each container shipped.
 - d. Names and addresses of recipients.
 - e. Price charged.

Unless otherwise paid, payment of the appropriate beer or wine tax shall accompany each report.

G. All shipments by holders of wine shipper's licenses or beer shipper's licenses shall be by approved common carrier only. Common carriers possessing all necessary licenses or permits to operate as common carriers in Virginia may apply for approval to provide common carriage of wine or beer, or both, shipped by holders of wine shipper's licenses or beer shipper's licenses by dated letter to the Supervisor, Tax Management Section, requesting such approval and agreeing to perform deliveries of beer or wine shipped, maintain records, and submit reports in accordance with the requirements of this section. The Board may refuse, suspend or revoke approval if it shall have reasonable cause to believe

that a carrier does not possess all necessary licenses or permits, that a carrier has failed to comply with the regulations of the Board, or that a cause exists with respect to the carrier that would authorize the Board to refuse, suspend or revoke a license pursuant to Title 4.1 of the Code of Virginia. Before refusing, suspending, or revoking such approval, the Board shall follow the same administrative procedures accorded an applicant or licensee under Title 4.1 of the Code of Virginia and regulations of the Board.

H. When attempting to deliver wine or beer shipped by a wine shipper's or beer shipper's licensee, an approved common carrier shall require:

1. The recipient to demonstrate, upon delivery, that he is at least 21 years of age; and
2. The recipient to sign an electronic or paper form or other acknowledgement of receipt that allows the maintenance of the records required by this section.

The approved common carrier shall refuse delivery when the proposed recipient appears to be under the age of 21 years and refuses to present valid identification. All licensees shipping wine or beer pursuant to this section shall affix a conspicuous notice in 16-point type or larger to the outside of each package of wine or beer shipped within or into the Commonwealth, in a conspicuous location stating: "CONTAINS ALCOHOLIC BEVERAGES; SIGNATURE OF PERSON AGED 21 YEARS OR OLDER REQUIRED FOR DELIVERY." Such notice shall also contain the wine shipper's or beer shipper's license number of the shipping licensee. No approved common carrier shall accept for shipment any wine or beer to be shipped to anyone other than a licensee of the Board unless the package bears the information required by this paragraph.

I. Approved common carriers shall maintain for two years complete and accurate records of all shipments of wine or beer received from and delivered for wine or beer shipper's licensees, including for each shipment:

1. Date of shipment and delivery
2. Number of items shipped and delivered.
3. Weight of items shipped and delivered.
4. Acknowledgement signed by recipient.
5. Names and addresses of shippers and recipients.

The records required by this paragraph shall be made available for inspection and copying by any member of the Board or its special agents upon request.

J. On or before the 15th day of each January, April, July, and October, each approved common carrier shall file with the Supervisor, Tax Management Section a report of activity for the previous calendar quarter. Such report shall include:

1. Whether any shipments were delivered during the quarter.
2. If shipments were made, the following information for each shipment:

a. Dates of each delivery.

b. Names and address of shippers and recipients for each delivery.

/s/ Mark R. Warner
Governor
July 8, 2003

VA.R. Doc. No. R03-272; Filed July 10, 2003, 10:38 a.m.

TITLE 8. EDUCATION

STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

Title of Regulations: 8 VAC 40-30. Regulations Governing the Approval of Certain Institutions to Confer Degrees, Diplomas and Certificates (repealing 8 VAC 40-30-10 through 8 VAC 40-30-470).

8 VAC 40-31. Regulation Governing Certification of Certain Institutions to Confer Degrees and Certificates (adding 8 VAC 40-31-10 through 8 VAC 40-31-280).

Statutory Authority: § 23-276.3 of the Code of Virginia.

Effective Dates: July 16, 2003, through July 15, 2004.

Agency Contact: Rick Patterson, Coordinator for Private and Out of State Institutions, State Council for Higher Education for Virginia, 101 N. 14th Street, 9th Floor, Richmond, VA 23219, telephone (804) 225-2609, FAX (804) 786-2027, or e-mail rickpatterson@schev.edu.

Preamble:

This emergency regulatory action is necessary pursuant to § 2.2-4011 of the Administration Process Act. The regulation is not otherwise exempt under the provisions of § 2.2-4006 of the Code of Virginia.

The action seeks to repeal 8 VAC 40-30 and promulgate emergency regulations 8 VAC 40-31 in order to implement changes required by the passage of Senate Bill 627 in 2002. The primary purpose of the changes is to move from a process where SCHEV must review an institution's application for approval to a process whereby institutions must certify that they meet the Council's standards as stated in statute and regulation. Additionally, the changes provide for the implementation of a fee structure, which among other things will require institutions to pay an annual fee to operate in the Commonwealth.

Substance: The State Council of Higher Education regulates the activity of Private and Out-of-State institutions of higher education operating within the Commonwealth of Virginia. All institutions of higher education - those offering degree programs and degree credits - require council certification. This regulation will be the primary document the council uses to administer the institutional certification process and to award annual certification to operate in Virginia. The regulation will: outline the specific definitions unique to

institutional certification; identify the regulated community; identify exempted institutions (per appropriate code) and requirements; define application procedures; establish and outline certification criteria; explain procedures for due process (appeal); and provide for the establishment of fees.

Consumer Protection: This regulation will provide institutions of higher education (IHE) with a set of specific and clearly defined criteria to confer degrees and degree credit in the Commonwealth. It will also make the certification process more efficient by eliminating the time and cost-consuming practice of individual program approval. Virginia students will benefit from the increased protection of their loans and cash payments. Institutions will be required to provide surety for all student payments via loan or cash that has not been earned. The council will conduct random and triggered audits of institutions, these visits – not currently a requirement – provide a much-needed opportunity to look into institutional practices on the “back end.” Finally, oversight for the institutional certification program will be delegated to the Executive Director of the State Council of Higher Education. This delegation precludes the fully appointed council, which meets quarterly, to act directly upon institutional and individual program approvals, pushing the authority to the staff level.

Potential Issues: Because this regulation includes a new requirement upon institutions to submit fees with certification applications and revises surety conditions, the council was proactive in soliciting feedback from private and public institutions while drafting emergency regulations. This feedback translated into several substantive changes to the emergency regulations and a clear understanding by the regulated community of the need for the regulatory changes.

Fee Structure: The fee structure is included in the emergency regulations as Schedule A.

CHAPTER 31.

REGULATION GOVERNING CERTIFICATION OF CERTAIN INSTITUTIONS TO CONFER DEGREES AND CERTIFICATES.

PART I.

DEFINITIONS, PROHIBITIONS, ADVERTISING.

8 VAC 40-31-10. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

"Adjunct faculty" means a person who is employed by an institution to teach no more than two courses during only one semester, quarter, or equivalent term during an academic year.

"Administrative capability" means a branch is considered to have administrative capability if (i) the branch maintains or has access to all records and accounts; (ii) the branch designates a named site director; (iii) the branch maintains a local mailing address; and (iv) the course offering at the branch consists of a large number of unit subjects which comprise a program of education or a set curriculum large enough to allow pursuit on a continuing basis.

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"Branch" means an additional location, operated by an institution with an approved existing site. A branch campus must have administrative capability exclusive of the main campus and adequate resources to ensure that the objectives of its programs can be met.

"Certification" means the process of securing authorization to operate an institution of higher education and/or degree program in the Commonwealth of Virginia including but not limited to providing a notarized statement by the institution's chief executive officer attesting to the institution's compliance with applicable standards.

"CIP code number" means the six-digit Classification of Instructional Programs number assigned to each discipline specialty.

"Class contact hour" means the basic unit of attendance for computing full-time equivalent student (FTES). It is a period of not less than 50 minutes of scheduled instruction and/or examination.

"College" means any institution of higher education that offers degree programs.

"Council" means the State Council of Higher Education for Virginia.

"Course for degree credit" means a single course whose credits are applicable to the requirements for earning a degree, diploma, or certificate.

"Degree" means any earned award at the associate, baccalaureate, master's, first professional, or doctoral level which represents satisfactory completion of the requirements of a program or course of study or instruction beyond the secondary school level and includes certificates and specialist degrees when such awards represent a level of educational attainment above that of the associate degree level.

"Degree program" means a curriculum or course of study that leads to a degree in a discipline or interdisciplinary specialty and normally is identified by a six-digit CIP code number.

"Diploma" or "certificate" means an award which represents a level of educational attainment at or below the associate degree level and which is given for successful completion of a curriculum comprised of two or more courses and applies only to those awards given for coursework offered within Virginia by institutions of higher education which are appropriately approved to offer, either within the Commonwealth or outside the Commonwealth, degrees at the associate, baccalaureate, graduate, or professional level.

"Full-time faculty" means a person whose: (i) employment is based upon an official contract, appointment, or agreement with an institution; (ii) principal employment is with that institution; and (iii) major assignments are in teaching and research. A full-time administrator who teaches classes incidental to administrative duties is not a full-time faculty member.

"In-state institution" means an institution of higher education that is formed, chartered or established within Virginia. For the purposes of certification as a degree-granting institution, an institution incorporated outside Virginia shall be considered a

Virginia institution if (i) it is incorporated in a state in which it has no instructional campus, and (ii) it produces clear and convincing evidence that its main or principal campus is located in Virginia.

"Institution" or "institution of higher education" means any person, firm, corporation, association, agency, institute, trust, or other entity of any nature whatsoever offering education beyond the secondary school level which has received certification from the Council and: (i) offers courses or programs of study or instruction which lead to, or which may reasonably be understood to be applicable to, a degree; or (ii) operates a facility as a college or university or other entity of whatever kind which offers degrees or other indicia of level of educational attainment beyond the secondary school level; or (iii) uses the term "college" or "university," or words of like meaning, in its name or in any manner in connection with its academic affairs or business.

"Instructional faculty" means a person employed by an institution of higher education that is engaged in instructional, research, or related activities.

"Multistate compact" means any agreement involving two or more states to offer jointly postsecondary educational opportunities, pursuant to policies and procedures set forth by such agreement and approved by Council.

"One full-time equivalent (1.0 FTE) faculty" means a statistical unit equal to either: (i) 15 credit hours of courses taught at the associate degree level or below; (ii) 12 credit hours of courses taught at the bachelor's level or (iii) nine credit hours of courses taught at the master's level or above. Courses taught by administrators, as well as those taught by instructional faculty, shall be included in this calculation.

"One full-time equivalent (1.0 FTE) student" means a statistical unit equal to either: (i) 15 hours of degree credit courses each term at the bachelor's level or lower, or (ii) 12 hours of degree credit courses each term at the master's level or higher.

"Out-of-state institution" means an institution of higher education that is formed, chartered or established outside Virginia.

"Part-time faculty" means a person whose: (i) annual employment is based upon an official contract, appointment, or agreement with an institution; (ii) principal employment is with an entity other than that institution; and (iii) teaching assignments include at least one course during at least two terms within the academic year.

"Postsecondary school" or "school" means an institution offering a curriculum or course of study in a discipline or interdisciplinary area that leads to a degree, certificate, or diploma.

"Program" means a curriculum or course of study in a discipline or interdisciplinary area that leads to a degree, certificate, or diploma.

"Program area" means a general group of disciplines in which one or more degree programs, certificates, or diplomas may be offered.

"Program of study" means a curriculum of two or more courses that is intended or understood to lead to a degree, diploma, or certificate. It may include all or some of the courses required for completion of a degree program.

"Site" means a location in Virginia where an institution (i) offers one or more courses for degree credit on an established schedule and (ii) enrolls two or more persons who are not members of the same household. A site may or may not be a branch, and it does not have to have administrative capability.

"Surety instrument" means a surety bond or a clean irrevocable letter of credit, issued by a surety company or banking institution, authorized to transact business in Virginia, adequate to provide refunds to students for the unearned non-Title IV portion of tuition and fees for any given semester, quarter or term and to cover the administrative cost associated with filing a claim against the instrument.

"Telecommunications activity" means any course for degree credit or program of study (e.g., certificate or diploma) leading to a degree; or to offer degrees offered by an institution of higher education or consortium of institutions where the primary mode of delivery to a site is television, videocassette or disc, film, radio, computer, or other telecommunications devices.

"University" means any institution offering programs leading to degrees or degree credit beyond the baccalaureate level.

8 VAC 40-31-20. Prohibited Acts.

A. Except as in accordance with this chapter, no person, or other entity shall sell, barter, or exchange for any consideration, or attempt to sell, barter, or exchange for any consideration, any degree, degree credit, diploma, or certificate.

B. No person, or other entity shall use, or attempt to use, in connection with any business, trade, profession, or occupation any degree or certification of degree or degree credit, including but not limited to a transcript of coursework, which has knowingly been fraudulently issued, obtained, forged, or materially altered.

C. Unless exempted from the provisions of this chapter pursuant to § 23-276.2 of the Code of Virginia, no person, firm, or institution may represent that credits earned at or granted by that person, firm, or institution are applicable for credit toward a degree, except under such conditions and in a manner specified and approved by the Council in accordance with this chapter.

D. Without prior certification, no person or other entity subject to the provisions of this chapter shall use in any manner, within the Commonwealth of Virginia, the term "college" or "university" or abbreviations or words of similar meaning in its name or in any manner in connection with its academic affairs or business or in any literature, catalog, pamphlet, or descriptive materials.

1. This subsection shall not apply to any person or other entity that (i) used the term "college" or "university" openly and conspicuously in its title within the Commonwealth prior to July 1, 1970; (ii) was granted authority to operate in Virginia by the Council between July 1, 1970, and July 1,

2002, and maintains valid authority to so operate in Virginia after July 1, 2002; (iii) was exempted from the provisions of Chapter 21 (§ 23-265 et seq.) of this title, as such law was in effect prior to July 1, 2002; or (iv) was authorized by the Council to use a name prior to a request for certification.

2. This subsection shall not apply to any person, firm, association, trust, corporation, or other entity which used the term "college" or "university" openly and conspicuously in its title within the Commonwealth prior to July 1, 1970.

3. For only as long as the provisions of Item 158 D of Chapter 912 of the 1996 Acts of Assembly shall be in effect, this subsection shall not apply to individual proprietorships, associations, co-partnerships or corporations which use the words "college" or "university" in their training programs solely for their employees or customers, which do not offer degree-granting programs, and whose name includes the word "college" or "university" in a context from which it clearly appears that such entity is not an educational institution.

E. Council may refuse to certify institution names and terms, which have the potential to mislead the general public about the institution's affiliation or association with any state-supported institution of higher education in Virginia. Terms such as, but not limited to, "public university," "public college," or "community college" may be protected from use by private institutions of higher education.

8 VAC 40-31-30. Advertisements, announcements, and other promotional materials.

A. An institution certified to operate by the Council in accordance with this chapter shall include in any print and electronic catalogs, advertisements, and other publications that the Council has certified the institution to operate in Virginia.

B. An institution shall use its name as shown in its certification, together with a complete address, for all advertising and promotional purposes within Virginia.

C. An out-of-state institution shall state in its course registration materials distributed in Virginia that:

1. Each course or degree, diploma, or certificate program offered in Virginia is approved by the governing board of the institution;
2. The appropriate state agency, if any, in the state where the main campus of the institution is located has granted whatever approval may be necessary for the institution to:
 - a. Offer courses or degree, diploma, or certificate programs at the level for which credit is being awarded for those courses or programs in Virginia;
 - b. Offer courses or degree programs outside its state;
 - c. Offer each course or degree, diploma, or certificate program being offered in Virginia; and
 - d. Any credit earned for coursework offered by the institution in Virginia can be transferred to the institution's principal location outside Virginia as part of an existing

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degree, diploma, or certificate program offered by the institution.

D. All advertisements, announcements, and promotional material of any kind, which are distributed in Virginia, shall be free from statements that are untrue, deceptive, or misleading.

E. No advertisement, announcement, or any other material produced by or on behalf of an institution of higher education shall in any way indicate that the institution is supervised, recommended, endorsed, or accredited by the Commonwealth of Virginia, by the State Council of Higher Education, or by any other state agency in Virginia.

PART II. EXEMPTIONS.

8 VAC 40-31-40. State-supported institutions.

This chapter shall not apply to the institutions named in § 23-9.5 of the Code of Virginia, including their branches, divisions, or colleges, or to any state-supported institution of higher education that may be established in the future.

8 VAC 40-31-50. Religious institutions.

A. The Council shall exempt from the provisions of Chapter 21 (§ 23-276.1 et seq.) of Title 23 of the Code of Virginia, any institution of higher education whose primary purpose is to provide religious training or theological education, provided that the institution:

1. Awards only degrees, diplomas, or certificates (i) whose titles indicate the institution's primary purpose plainly upon their face and (ii) which state that the institution is excluded from the requirement of state certification; and

2. States plainly in its catalogs and other publications that (i) the institution's primary purpose is to provide religious training or theological education, (ii) the institution's degrees, diplomas, or certificates are so titled and worded, and (iii) the institution is exempt from the requirement of state certification.

3. The title of each degree, diploma, or certificate awarded by an institution which claims an exemption under the provisions of this section must reflect that the institution's primary purpose is religious education.

a. The titles of religious degrees that may be awarded include, but are not limited to, (i) Bachelor of Christian Education, (ii) Master of Divinity, and (iii) Doctor of Sacred Theology.

b. The titles of secular degrees that may not be awarded in any discipline, including religion, Christian education, and biblical studies, are (i) Associate of Arts, (ii) Associate of Science, (iii) Associate of Applied Science, (iv) Associate of Occupational Science, (v) Bachelor of Arts, (vi) Bachelor of Science, (vii) Master of Arts, (viii) Master of Science, (ix) Doctor of Philosophy, and (x) Doctor of Education.

B. Exemptions granted after July 1, 2002, will be for a maximum of five years. Institutions wishing to maintain an exempt status, must reapply to Council at least six months prior to the expiration of the exemption period. Exempt

institutions shall not make claims of "approval" "endorsement" or other such terms by the Council in any of their promotional materials. Exempt institutions shall clearly state in their catalogs and promotional materials that they are exempt from the requirements of state regulation and oversight.

C. An institution that awards secular degrees in addition to religious degrees, certificates or diplomas, as defined in subsections A and B of 8 VAC 40-31-50, must comply with the provisions for certification for all non-religious degree programs.

D. Each institution requesting full or partial exemption must apply on forms provided by and in a manner prescribed by the Council.

E. The Council, on its own motion, may initiate formal or informal inquiries to confirm that this chapter is not applicable to a religious institution if the Council has reason to believe that the institution may be in violation of the provisions of this section.

1. Any institution which claims an exemption under subsection A of this section on the basis that its primary purpose is to provide religious training or theological education shall be entitled to a rebuttable presumption of the truth of that claim.

2. It shall be the Council's responsibility to show that an institution is not exempt under subsection A of this section.

The Council assumes no jurisdiction or right to regulate religious beliefs under this chapter.

F. An institution whose claim for exemption under subsection A of this section is denied by the Council shall have the opportunity to appeal the Council's action in accordance with 8 VAC 40-31-70.

8 VAC 40-31-60. Institutions, Programs, Degrees, Diplomas, and Certificates Exempt by Council Action.

A. The following activities or programs offered by institutions otherwise subject to this chapter shall be exempt from its provisions:

1. Any postsecondary school subject to the provisions of Chapter 16 (§ 22.1-319 et seq.) of Title 22.1 of the Code of Virginia.

a. Included are proprietary schools and other postsecondary nondegree-granting institutions - subject to the approval of the State Board of Education and that offers only non-degree credit certificate or diploma programs.

b. A proprietary school or other postsecondary nondegree-granting institution licensed by the State Board of Education that applies to the Council for certification shall continue to comply with the provisions of Chapter 16 (§ 22.1-319 et seq.) of Title 22.1 of the Code of Virginia and relevant regulations of the State Board of Education for the approval of all nondegree credit programs.

2. Any honorary degree conferred or awarded by an institution, as long as the degree (i) does not represent the

satisfactory completion of all or any part of the requirements of a program or course of study and (ii) is normally regarded as one which is intended to be commemorative in nature in recognition of an individual's contributions to society. Such degree must state on its face that it is honorary in nature.

3. Any postsecondary educational course or program of study offered by an institution of higher education at a United States military post or reservation when that course or program is open only to military post personnel, their dependents or civilians employed by that military post or reservation.

a. Military personnel or civilians employed at one military post or reservation may take courses or programs of study at another military post or reservation without affecting the exemption from this chapter.

b. This exemption shall not apply to an institution that offers a course or program of study at a military post or reservation if:

(1) Civilians who are not employed by the military post or reservation are enrolled in the course or program at that site.

(2) The appropriate military official at the military post or reservation submits a written request to the executive director of the Council that the institution be subject to this chapter.

4. Any nursing education program offered by an institution to the extent that the program is regulated by the Virginia Board of Nursing.

a. The Virginia Board of Nursing is the state agency which is authorized to license registered nurses and to approve nursing programs with regard to the adequacy of the curriculum and resources for preparing students to take the licensing examination.

b. To offer a degree in nursing, an institution must have obtained prior Council certification.

5. A professional program for professional or occupational training offered by an institution to the extent that the program is subject to approval by a regulatory board pursuant to Title 54.1 of the Code of Virginia.

6. A certificate or diploma awarded by an institution on the basis of Continuing Education Unit (CEU) credit, or the equivalent, provided that the institution shall plainly state on the face of the certificate or diploma that the CEU credit is neither intended to be applicable to a degree program nor to be used in place of that for which degree credit is required.

7. Any course or program of study given by or approved by any professional body, fraternal organization, civic club, or benevolent order principally for professional education or advancement or similar purpose and for which no degree or degree credit is awarded.

8. Courses or programs offered through approved multistate compacts, including but not limited to, the Southern Regional Education Board's Electronic Campus; and

9. Courses for degree credit offered and delivered by an institution of higher education solely on a contractual basis for which no individual is charged tuition.

B. Notwithstanding the exemptions provided in this section, an institution of higher education may seek certification for an otherwise exempt activity or program.

8 VAC 40-31-70. Denial of Exemption; Appeal of Action.

If the Council denies a request for exemption the executive director shall ensure that the institution is afforded an opportunity to be heard. The procedures set forth in 8 VAC 40-31-200 of this chapter, shall apply.

PART III. ROLE OF THE COUNCIL AND STAFF.

8 VAC 40-31-80. Role of the Council.

A. Pursuant to § 23-276.9 of the Code of Virginia, the Council may establish fees for services and the methods for collecting such fees.

B. Pursuant to § 23-276.3 (E) of the Code of Virginia and unless otherwise indicated, the Council delegates authority for administering the requirements of § 23-276.1 through § 23-276.12 of the Code of Virginia and this chapter to the executive director.

C. Pursuant to § 23-276.3 of the Code of Virginia, adopt certification criteria for the operation of institutions of higher education in Virginia.

D. Only the Council may refuse to grant certification, or revoke or suspend certification. In these instances, the Council will be responsible for ensuring due process and compliance with the Administrative Process Act (§ 2.2-4000 et seq.)

8 VAC 40-31-90. Role of the Executive Director.

A. In addition to other administrative responsibilities vested in the executive director of the Council, the executive director shall carry out the following administrative responsibilities relative to this chapter:

1. Authorize certification to operate for institutions of higher education that meet the certification criteria.

2. Authorize the use of the term "college" or "university" in an institution's name.

3. Authorize religious exemptions.

4. Pursuant to § 23-276.7 of the Code of Virginia, authorize emergency action in the event an institution has received an adverse action by the United States Department of Education or by its accrediting agency which threatens a disruption of the operation of the institution and exposes students to a loss of course or degree credit or financial loss. All emergency actions shall be reported to Council at its next meeting to either ratify or take such as actions as it may deem necessary. The authority of the executive director in these instances includes:

a. Suspend new enrollment in specified programs, degree levels or in all programs and degree levels.

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b. Require the institution to provide a guaranty instrument or increase the penal amount or a current guaranty.

c. Take other actions as may be necessary to protect the rights of currently enrolled or future students.

5. Assess administrative fees.

6. Authorize the release of a guaranty instrument requirement.

7. The executive director may delegate certain administrative responsibilities to the Council staff.

8 VAC 40-31-100. Role of the Council Staff.

A. The role of Council staff shall include:

1. Oversight and administration for purposes of compliance, Title 23, Chapter 21, §§ 23-276.1 through 23-276.12 of the Code of Virginia and chapter.

2. Review initial and annual certification requirements for all institutions.

3. Perform random and periodic site visits to review, inspect and investigate institutional compliance.

4. Investigate as necessary all noncertified higher education activities operating in the Commonwealth of Virginia.

5. Monitor the accreditation activities of all nonaccredited higher education institutions operating in the Commonwealth of Virginia.

6. Investigate all written and signed complaints or adverse publicity or any situation that may adversely affect students or consumers.

7. Share with state or federal agencies and appropriate accrediting bodies information regarding the operation or closure of institutions of higher education operating in Virginia.

8. The executive director may delegate other responsibilities as deemed appropriate.

PART IV.

INSTITUTIONS FOR WHICH CERTIFICATION IS REQUIRED.

8 VAC 40-31-110. Certain Existing Approvals and Exemptions Continued.

A. An institution of higher education that was approved or authorized to confer degrees at a particular level or to offer one or more degree programs or program areas may continue to confer those degrees and to offer those programs until and unless the institution's approval or authorization is revoked by the Council in accordance with 8 VAC 40-31-200 of this chapter.

B. Virginia institution of higher education that was approved or authorized to confer degrees by the Council, the State Board of Education, or act of the General Assembly of Virginia prior to July 1, 1980, shall be subject to whatever conditions or stipulations may have been imposed at the time the approval or authorization was granted.

C. An institution of higher education that is wholly or partially exempt from the requirement of state approval may continue to confer degrees and offer credit and noncredit instruction in accordance with Part II of this chapter (8 VAC 40-31-40 et seq.) until and unless the institution no longer qualifies for exemption from this chapter.

8 VAC 40-31-120. Certification Required for New and Existing Institutions of Higher Education.

A. All instructional offerings for degree credit in Virginia are subject to this chapter, even though the degree credit awarded for those offerings may be transferred to a location outside Virginia.

B. A new institution must become certified to operate prior to engaging in activities related to higher education via telecommunications activity or at a site within the Commonwealth.

1. The determination for certification of telecommunications activities may be based upon, but not limited to, physical presence.

2. Telecommunications activities, with the exception of degree programs and academic credit offered exclusively from outside the state through individual and private interstate communication, are subject to the certification criteria required for all institutions of higher education.

C. Existing institutions must re-certify compliance with certification criteria on an annual basis in order to continue offering programs for degree credit or conferring degrees.

D. Institutions operating branches or additional locations must certify each location separately.

PART V.

CERTIFICATION CRITERIA.

8 VAC 40-31-130. Application of Certification Criteria.

A. The certification criteria shall include but not be limited to, (i) procedures by which an institution may apply for certification, (ii) criteria designed to ensure that all institutions of higher education that are subject to this chapter meet minimal academic standards, and to be in the best interests of students who are expending time and money in obtaining postsecondary education and persons who rely on postsecondary degrees, diplomas, and certificates in judging the competence of individuals.

B. Institutions, by notarized signature of the Chief Executive Officer, will be responsible for certifying total compliance with certification criteria on an initial and annual basis.

8 VAC 40-31-140. Certification Criteria.

A. The following criteria shall apply to each institution for which certification is required:

B. The course, program, curriculum and instruction must be of quality, content and length to adequately achieve the stated objective. Administrators and faculty must be qualified and appropriately credentialed:

1. For terminal occupational/technical programs leading to the Associate of Occupational Science (A. O. S.) degree,

general education courses must compose at least 10% of the total credit hours required for the degree.

2. For terminal occupational/technical programs leading to the Associate of Applied Science (A. A. S.) degree, general education courses shall compose at least 25% of the total credit hours required for the degree.

3. All instructional faculty teaching in a terminal occupational/technical program leading to the Associate of Applied Science (A. A. S.) or Associate of Occupational Science (A. O. S.) degree shall:

a. If teaching general education courses, hold a baccalaureate degree plus at least 18 graduate credit hours in the discipline being taught.

b. If teaching occupational/technical courses, hold either (i) an associate degree or (ii) qualify for a faculty appointment by virtue of scholarly or professional achievements.

4. For all university parallel associate degree programs, general education courses shall compose at least 25% of the total credit hours required for the degree, and required courses in the major field of study shall compose no more than 50% of the total credit hours required for the degree in a specific discipline.

5. All instructional faculty teaching in a college-transfer program at the associate level shall:

a. If teaching general education courses or in programs in the liberal arts and sciences, hold a baccalaureate degree plus at least 18 graduate credit hours in the discipline being taught.

b. If teaching occupational/technical courses, hold a baccalaureate degree in the discipline being taught or qualify by virtue of professional or scholarly achievement.

6. All instructional faculty members who teach in programs at the baccalaureate level shall:

a. Hold a master's degree in the discipline being taught or hold a master's degree in an area other than that being taught with at least 18 graduate semester hours in the teaching discipline.

b. Exception to academic preparation may be made in instances where substantially documented professional and scholarly achievements can be made.

7. All instructional faculty teaching in a program at the master's or higher, level shall:

a. Hold a doctoral or other terminal degree.

b. Exception to academic preparation may be made in instances where substantially documented professional and scholarly achievements can be made.

8. In addition to the above instructor qualifications, the institution must certify that:

a. All instructional courses for degree credit normally require a minimum of 15 class contact hours for each semester credit hour or a minimum of 10 class contact

hours for each quarter credit hour, or the equivalent, and an expectation for additional out of class assignments per credit hour.

b. The elective and required courses for each program are offered on a schedule and in a sequence that enables both full-time and part-time students to complete the program in a reasonable period of time.

c. The institution's instructional faculty at each site shall hold either full-time, part-time, or adjunct appointments.

d. The institution's academic programs meet the following criteria: i) ensure a properly credentialed and course-qualified instructor teaches each course; ii) ensure that a credentialed and course qualified academic advisor is available to meet the concerns of the student, and that a student contact by any method will elicit a response from the advisor within a reasonable timeline; iii) ensure that continual curriculum development and oversight for each major and concentration/track is maintained; and iv) ensure a program director is named and designated to oversee each program area.

e. A plan to provide for interaction between student and faculty, and among students.

C. The institution shall have a clear, accurate, and comprehensive written mission statement, which shall be available to the public upon request. The statement of mission minimally shall include the following items:

1. The history and development of the institution;

2. An identification of any persons, entities, or institutions that have a controlling ownership or interest in the institution;

3. The purpose of the institution, including a statement of the relative degree of emphasis on instruction, research, and public service;

4. A description of the institution's activities including telecommunications activities away from its principal location, including a list of all program areas in which courses are offered away from the principal location;

5. A list of all locations in Virginia at which the institution offers courses, a list of the degree programs currently offered or planned to be offered in Virginia, and the relationship of these programs to the statement of purpose; and

6. A statement of the institution's long-range plans (minimally five years).

D. The institution shall have a current, written document, available to students and the general public upon request that accurately states the powers, duties, and responsibilities of:

1. The governing board or owners of the institution;

2. The chief operating officer at each site in Virginia;

3. The principal administrators at each site in Virginia;

4. The students, if students participate in institutional governance.

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E. The institution shall have and maintain, and shall provide to all applicants upon request, a policy document accurately defining the minimum requirements for eligibility for admission to the institution and for acceptance at the specific degree level or into all specific degree programs offered by the institution. In addition, the document shall explain:

1. The standards for academic credit given for experience;
2. The criteria for transfer credit;
3. The criteria for refunds of tuition and fees; and
4. Students' rights, privileges, and responsibilities.

F. The institution shall maintain records on all enrolled students. These records minimally shall include:

1. Each student's application for admission and admissions records containing information regarding the educational qualifications of each regular student admitted which are relevant to the institution's admissions standards. Each student record must reflect the requirements and justification for admission of the student to the institution. Admissions records must be maintained for five years.
2. Transcript of the student's academic work at the institution, which shall be retained permanently in either hard copy forms or in a database with backup.
3. A record of student academic progress at the institution including programs of study, dates of enrollment, courses taken and completed, grades, and indication of the student's current status (graduated, probation, etc).
4. The institution shall transact a written, binding agreement with another institution or records-maintenance organization with which the institution is not corporately connected for the preservation of students' transcripts by another institution or agency, as well as for access to the transcripts, in the event of institutional closure or revocation of certification in Virginia.

G. Each institution shall provide students, prospective students, and other interested persons a catalog, bulletin or brochure containing, as a minimum the following information:

1. A description of any financial aid offered at the institution including repayment obligations, standards of academic progress required for continued participation in the program, and source of loan or scholarship.
2. A broad description, including academic and/or vocational objectives of each program offered, the number of hours of instruction in each subject and total number of hours required for course completion, course descriptions, and a statement of the type of credential awarded.
3. A statement of tuition and fees and other charges related to enrollment, such as deposits, fees, books and supplies, tools and equipment, and any other charges for which a student may be responsible.
4. The institution's refund policy pursuant to paragraph O of this section.
5. The institution's procedures for handling complaints, including procedures to ensure that a student will not be

subject to unfair actions as a result of his/her initiation of a complaint proceeding.

6. The name and address of the institution's accrediting body, if applicable.

7. The minimum requirements for satisfactory completion of each degree level and degree program.

8. The institution shall ensure that all institutional officials accurately represent the transferability of any courses or programs and state if any of the associate degrees offered by the institution are considered terminal degrees.

9. If the institution offers programs leading to the Associate of Applied Science or Associate of Occupational Science degree, that these programs are terminal occupational/technical programs and their credits generally are not applicable to other degrees.

10. The academic schedule for the period covered by the publication.

11. Placement services and employment opportunities shall be accurately stated.

H. The institution must have a clearly defined process by which the curriculum is established, reviewed and evaluated. Evaluation of institutional effectiveness must be completed on a regular basis and include, but not be limited to:

1. An explanation of how each degree or degree program is consistent with the mission of the institution.
2. The written process for evaluating each degree level and program once initiated and written procedures for assessing the extent to which the educational goals are being achieved.
3. Documented use of the results of these evaluations to improve the degree programs.

I. Pursuant to § 23-276.3 (B) of the Code of Virginia, the institution must maintain records that demonstrate it is financially sound, exercises proper management, financial controls and business practices and can fulfill its commitments for education or training. The institution's financial resources should be characterized by stability, which indicates the institution is capable of maintaining operational continuity for an extended period of time. The stability indicator that will be used is the U.S. Department of Education (USDE) Financial Ratio (composite score).

1. Institutions shall provide the results of an annual audited or certified financial review.

2. The USDE composite score range is -1.0 to 3.0. Institutions with a score of 1.5 to 3.0 meet fully the stability requirement in §140.1; scores between 1.0 and 1.4 meet the minimum expectations; and, scores less than 1.0 do not meet the requirement and shall be immediately considered for audit.

J. Pursuant to § 23-276.3 (B) of the Code of Virginia, the institution shall have and maintain a surety instrument issued by a surety company or banking institution authorized to transact business in Virginia, adequate to provide refunds to

students for the unearned non-Title IV portion of tuition and fees for any given semester, quarter or term and to cover the administrative cost associated with the instrument claim. The instrument shall be based on the non-Title IV funds, which have been received from students or agencies for which the education has not yet been delivered. This figure shall be indicated in audited or certified financial statements as a Current (non-Title IV) Tuition Liability. The audit date shall correspond to the institutional fiscal year. Institutions certified under this regulation shall be exempt from the surety instrument requirement if they can demonstrate a U.S. Department of Education composite financial responsibility score of 1.5 or greater on their current audited financial statement; or if they can demonstrate a composite score between 1.0 and 1.4 on their current audited financial statement and have scored at least 1.5 in either of the prior two years. Unaccredited institutions must have completed at least one calendar year of academic instruction to qualify for the surety waiver.

K. The institution shall have a current written policy on faculty accessibility, which shall be distributed to all students. The institution shall ensure that instructional faculty are accessible to students for academic advising at stated times outside regularly scheduled class hours at each site when a course is offered and throughout the period during which the course is offered.

L. All recruitment personnel must provide prospective students with current and accurate information on the institution through the use of written and electronic materials and in oral admissions interviews:

1. The institution shall be responsible and liable for the acts of its admissions personnel.

2. No institution, agent, or admissions personnel shall use deceptive trade or sales practice by knowingly making any statement or representation that is false, inaccurate or misleading.

M. All programs offered via telecommunications must be comparable in content, faculty, and resources to those offered in residence, and include regular student-faculty interaction by computer, telephone, mail, and/or face-to-face meetings.

N. The institution shall maintain and ensure that students have access to a library with a collection, staff, services, equipment and facilities that are adequate and appropriate for the purpose and enrollment of the institution. Current and formal written agreements with other libraries or with other entities may be used. Institutions offering graduate work shall provide access to library resources that include basic reference and bibliographic works and major journals in each discipline in which the graduate program is offered.

O. In accordance with § 23-276.3 (B) of the Code of Virginia, the institution shall establish a tuition refund policy and communicate it to students.

PART VI. CERTIFICATION REQUIREMENTS.

8 VAC 40-31-150. Initial certification.

A. An institution shall not use the term "college" or "university" until it has received acknowledgment from SCHEV that the name is not in violation of 8 VAC 40-31-20 of these regulations.

1. An institution seeking certification, must notify SCHEV of its proposed name prior to filing such name with the State Corporation Commission.

2. Prior to receiving certification to operate, a copy of the institution's certificate from the Virginia State Corporation Commission authorizing it to transact business in the Commonwealth under the acknowledged name must be submitted.

B. An institution shall not begin operation in the Commonwealth of Virginia without first having received certification to operate from the Council.

C. All certifications shall expire on the certificate expiration date. Applications for re-certification must be submitted to SCHEV at least 60 days prior to the expiration date of the current certification.

D. Certification is not transferable. In the event of a change of ownership of a certified institution, the new owner or governing body must secure certification.

E. SCHEV will process all applications and provide notice to applicants within 45 days of receipt.

8 VAC 40-31-160. Application Requirements.

A. Each certification to operate attests that the institution is in compliance with § 23-276.1 through 23-276.12 of the Code of Virginia and with this chapter.

B. To apply for certification the following information must be submitted:

1. A completed certification application form provided by SCHEV.

2. A statement regarding the institution's accreditation status.

- a. Out-of-state institutions requesting certification must be fully accredited by an organization recognized by the United States Department of Education.

- b. Unaccredited institutions must submit a plan of action for securing accreditation from an organization recognized by the United States Department of Education, including the name of the accrediting organization and timeframe. In order to remain eligible for certification, an institution must secure accreditation within 10 years of its initial date of certification.

3. A copy of the transacted surety instrument form.

4. A completed checklist acknowledging compliance with certification criteria with a notarized attestation statement signed by the chief executive officer or equivalent .

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5. A company check in the correct, nonrefundable amount, made payable to the Treasurer of Virginia.

6. A copy of the institution's certificate from the State Corporation Commission providing authorization to transact business within the Commonwealth.

7. For out-of-state institutions, a copy of the institution's authorization to operate from the state agency in which its main campus is domiciled.

C. An existing post-secondary school licensed by either (i) the Virginia Department of Education in accordance with Chapter 16 (§ 22.1-319 et seq.) of Title 22.1 of the Code of Virginia or (ii) any other state agency empowered by the Code of Virginia to license the school, its teachers or curriculum, or both, must become certified prior to enrolling any student into a course for degree credit or program of study. The school must submit an application for certification to operate that shall contain all of the requirements outlined in 8 VAC 40-31-170 A; B.

8 VAC 40-31-170. Withdrawal of application by institution.

A. An institution that has submitted an application to the Council may withdraw that application without prejudice at any time.

B. Withdrawal of an application by an institution shall result in revocation by the Council of all authorizations associated with that application that previously had been granted to the institution.

C. An institution that has withdrawn an application may submit, at any time and without prejudice, a new application to the Council in accordance with Part V of this chapter.

D. An institution that withdraws an application prior to receiving notification of certification will receive a refund of the filing fee minus a handling charge.

8 VAC 40-31-180. Audit Requirements.

A. All certified institutions shall be subject to random periodic audits. The purpose of such audit is to verify compliance with certification criteria.

B. At the discretion of Council staff, an audit review committee shall consist of the executive director or designee and may:

1. Include individuals with the experience in the disciplines in which the institution provides instruction; and/or
2. Consist of Council staff.

C. Audits shall be random and/or triggered by, but not limited to, the following events:

1. Staff concerns based on questionable initial or recertification application information.
2. Volume and frequency of negative student complaints and/or adverse publicity.
3. Difficulty securing accreditation within the specified time period.
4. Adverse action by the U.S. Department of Education or the institution's accrediting agency.

5. A USDE composite financial responsibility score of less than 1.0.

D. Following an audit of the institution, Council staff will prepare a report with recommendations for review by the Council. If an institution is found noncompliant, the Council may:

1. Determine no action is necessary and have the report filed;
2. Change the status to probationary certification and require remediation action(s) within a specified timeframe;
3. Revoke or suspend certification;
4. Pursuant to § 23-276.12 of the Code of Virginia, refer the matter to the Office of the Attorney General for consideration of imposition of criminal penalty.

8 VAC 40-31-190. Duplication of, and need for instruction for degree credit is irrelevant.

In considering an institution's application, the Council shall not take into account either duplication of effort by public and private institutions in Virginia or need within the Commonwealth for the course for degree credit, program of study, or degree program for which certification is sought.

PART VII. PROCEDURES FOR CONDUCTING FACT-FINDING CONFERENCES AND HEARINGS.

8 VAC 40-31-200. Procedural rules for the conduct of fact-finding conferences and hearings.

A. Fact-finding conference; notification, appearance, conduct.

1. Unless there are emergency circumstances requiring immediate action, no certification application shall be denied, suspended or revoked except upon notice stating the proposed basis for such action and the time and place for a fact-finding conference, as set forth in § 9-6.14:11 of the Administrative Process Act.

2. If a basis exists for a refusal to certify or a suspension or a revocation of a certificate to operate, the council shall notify, by certified mail or by hand delivery, the interested parties at the address of record maintained by the council.

3. Notification shall include the basis for the proposed action and afford interested parties the opportunity to present written and oral information to the council, which may have a bearing on the proposed action at a fact-finding conference. If there is no withdrawal, a fact-finding conference shall be scheduled at the earliest mutually agreeable date, but no later than 60 days from the date of the notification. Institutions who wish to waive their right to a conference shall notify the council at least 14 days before the scheduled conference.

4. If after consideration of information presented during an informal fact-finding conference, a basis for action still exists, the interested parties shall be notified in writing within 60 days of the fact-finding conference, via certified or hand-delivered mail, of the decision and the right to a formal hearing. Parties to the conference may agree to extend the

report deadline if more time is needed to consider relevant information.

B. Hearing; notification, appearance, conduct.

1. If, after a fact-finding conference, a sufficient basis still exists to deny, suspend or revoke a certification, interested parties shall be notified by certified mail or hand delivery of the proposed action and of the opportunity for a hearing on the proposed action. If an organization desires to request a hearing, it shall notify the council within 14 days of receipt of a report on the conference. Parties may enter into a consent agreement to settle the issues at any time prior to, or subsequent to, an informal fact-finding conference.

2. If an interested party or representative fails to appear at a hearing, the hearing officer may proceed in his absence and make a recommendation.

3. Oral and written arguments may be submitted to and limited by the hearing officer. Oral arguments shall be recorded in an appropriate manner.

C. Hearing location. Hearings before a hearing officer shall be held, insofar as practicable, in the county or city in which the institution is located. Hearing officers may conduct hearings at locations convenient to the greatest number of persons or by telephone conference, videoconference or similar technology, in order to expedite the hearing process.

D. Hearing decisions.

1. Recommendations of the hearing officer shall be a part of the record and shall include a written statement of the hearing officer's findings of fact and recommendations as well as the reasons or basis for the recommendations. Recommendations shall be based upon all the material issues of fact, law or discretion presented on the record.

2. The council shall review the recommendation of the hearing officer and render a decision on the recommendation within 30 days of receipt. The decision shall cite the appropriate rule, relief or denial thereof as to each issue.

E. Agency representation. The executive director's designee may represent the council in an informal conference or at a hearing.

PART VIII.

CRIMINAL PROSECUTION FOR VIOLATION; CIVIL ENFORCEMENT.

8 VAC 40-31-210. Criminal prosecution for violation.

A. Any person, firm, association, institution of higher education, trust, or other entity which violates any provision of § 23-276.12 of the Code of Virginia or which, without certification from the Council as provided in this chapter, offers or confers degrees, diplomas, certificates, programs, or courses of study shall be guilty of a class 1 misdemeanor (§ 23-273 of the Code of Virginia).

B. Each degree, diploma, certificate, program, or course of study offered or conferred in violation of this chapter or each violation of the provisions of § 23-276.12 of the Code of Virginia shall constitute a separate offense.

8 VAC 40-31-220. Civil enforcement.

Upon the determination of the Council that any institution of higher education, or its agents or representatives, is in violation of this chapter, the Council may institute a proceeding in equity to enjoin the violation. It shall not be necessary for the Council to allege or prove an inadequate remedy at law in that proceeding. In the civil proceeding, the Council may also sue for and recover a monetary penalty if no criminal prosecution is instituted as provided by § 23-276.12 (B) (C) of the Code of Virginia.

**PART IX.
ADDITIONAL REGULATIONS.**

8 VAC 40-31-230. Virginia law to apply to agreements.

The laws of Virginia shall govern any agreement, contract, or instrument of indebtedness executed between an institution of higher education and any person enrolling in any course or program offered or to be offered by an institution in Virginia and also between that institution and any person employed or offered employment by that institution in Virginia.

8 VAC 40-31-240. Fees.

A. Fees are included in Schedule A of this regulation.

B. All fees collected by Council staff will be deposited in the State Treasury.

C. All fees are nonrefundable with the exception of withdrawal of an application in which case all fees will be refunded minus a reasonable handling charge.

D. Fees must be paid with a company check and made payable to the Treasurer of Virginia.

E. The Council is authorized to adjust fees as deemed necessary.

8 VAC 40-31-250. Receipt of applications, correspondence and other materials.

A. All applications, forms, letters or other materials relating to, or required by this chapter should be sent to: State Council of Higher Education for Virginia, ATTN: Institutional Certification, James Monroe Building, 9th Floor, 101 North Fourteenth Street, Richmond, Virginia 23219.

B. The mail of items specified in subsection A of this section shall not constitute receipt of them by the Council unless sent by registered or certified mail, return receipt requested.

8 VAC 40-31-260. Closure of an Institution.

A. The Council, on its own motion, may authorize an institution whose application for certification to operate is denied in accordance with subsection A of 8 VAC 40-31-200 of this chapter to continue to offer instruction for degree credit to all currently enrolled students until the end of the semester, quarter, or other academic term during which certification is denied.

B. The Council, on its own motion, may authorize an institution whose certification is revoked in accordance with subsection C of 8 VAC 40-31-210 of this chapter to offer the coursework necessary for all currently enrolled students to complete their

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programs and to award degrees to those students, provided that the institution:

1. Offers degree coursework only to those students who were enrolled at the time the institution's certification was revoked; and
2. Offers all necessary coursework on a schedule that permits all currently-enrolled students to complete their programs in a reasonable period of time.

C. When an institution decides to voluntarily cease operations it must immediately inform the Council of the following:

1. The planned date for the termination of operations.
2. The planned date and location for the transfer of student records.
3. The name and address of the organization to receive and manage the student records and the name of the official who is designated to manage transcript requests. The organization designated for the preservation of the student records may not be corporately connected to the closing institution.
4. Arrangements for the continued education of currently enrolled students.
5. Rosters showing the name, address, and current academic status of enrolled students.

D. In the event of institutional closure or revocation of certification, Council may facilitate the transfer of student records to the designated repository.

E. Council shall be responsible for securing and preserving student records until the designated repository accepts them.

8 VAC 40-31-270. Waiver by Council.

The Council may waive or modify the certification requirements for an accredited institution, if the Council finds that such waiver or modification will not conflict with the intent of the regulations and that in light of the institution's mission, literal application of such requirement(s) creates an unreasonable hardship on the institution.

8 VAC 40-31-280. Freedom of Information Act to apply.

All materials submitted by an institution in its application for approval or in response to a request by the council for pertinent information shall be subject to the Virginia Freedom of Information Act (Chapter 21 of Title 2.1 of the Code of Virginia) and shall be available for public inspection in accordance with the provisions of § 2.1-342 of the Code of Virginia.

Schedule A

FLAT-RATE FEES ALL NONEXEMPT INSTITUTIONS*

Initial or Annual certification for unaccredited institutions =	\$6,000
Initial or Annual certification for accredited institutions =	\$2,500

Late fee = \$100.00/day for first 10 business days after expiration of annual certification (11th day institution notified to cease and desist and matter referred for prosecution)

Noncompliance administrative fees = \$1,000.00 for each occurrence of noncompliance found as a result of audit

*Initial or renewed religious exemption application = \$300.00

Request for name acknowledgement = \$100.00

Nonrefundable handling charge = \$500.00 (withdrawal of application)

/s/ Mark R. Warner
Governor
Date: June 30, 2003

VA.R. Doc. No. R03-296; Filed July 16, 2003, 4:22 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD FOR OPTICIANS

Title of Regulation: 18 VAC 100-20. Board for Opticians Regulations (adding 18 VAC 100-20-53).

Statutory Authority: § 54.1-201 of the Code of Virginia.

Effective Dates: July 17, 2003, through July 16, 2004.

Agency Contact: William H. Ferguson, II, Executive Director, Board for Opticians, 3600 West Broad Street, Richmond, VA 23230, telephone (804) 367-8590, FAX (804) 367-6295, or e-mail opticians@dpor.state.va.us.

Preamble:

Chapter 740 of the 2002 Acts of the Assembly mandates that the board promulgate regulations for an out-of-state practitioner to be licensed to volunteer his services to a nonprofit organization that has no paid employees and offers health care to underprivileged populations throughout the world. The regulations set forth the information and documentation that must be provided prior to such service to ensure compliance with the statute. The enactment clause requires the board to adopt emergency regulations, and it is the board's intent to replace these regulations with permanent regulations.

18 VAC 100-20-53. Registration for voluntary practice by out-of-state licensees.

Any optician who does not hold a license to practice in Virginia and who seeks registration in accordance with § 54.1-1701(5) of the Code of Virginia shall:

1. File a complete application for registration on a form provided by the board within 15 days prior to engaging in such practice. An incomplete application will not be considered;
2. Provide a complete list of professional licensure in each state in which he has held a license and a copy of any current license;
3. Provide a name of the nonprofit organization, the dates and location of the voluntary provision of services;
4. Provide a notarized statement from a representative of the nonprofit organization attesting to its compliance with the provisions of § 54.1-1701(5) of the Code of Virginia and 18 VAC 100-20-53.

NOTICE: The forms used in administering 18 VAC 100-20, Board for Opticians Regulations, are listed below. Any amended or added forms are reflected in the listing and are published following the listing.

FORMS

License Application, 11LIC (rev. 11/99).

Contact Lens Endorsement Application, 11CLEND (eff. 11/99).

Reinstatement Application, REINSTATE APP (eff. 9/99).

Voluntary Practice Registration Application, 11VOLREG (eff. 7/03).

Sponsor Certification for Voluntary Practice Registration, 11VRSPCERT (eff. 7/03).

/s/ Mark R. Warner
Governor
Date: July 7, 2003

VA.R. Doc. No. R03-294; Filed July 17, 2003, 12:56 p.m.

Commonwealth of Virginia
Department of Professional and Occupational Regulation
3600 West Broad Street
Post Office Box 11066
Richmond, Virginia 23230-1066
(804) 367-8509



Board for Opticians
SPONSOR CERTIFICATION FOR VOLUNTARY PRACTICE REGISTRATION

In accordance with § 54.1-1701(5) of the *Code of Virginia*, any optician who (i) does not regularly practice in Virginia, (ii) holds a current valid license or certificate to practice as an optician in another state, territory, district or possession of the United States, (iii) volunteers to provide free health care to an underserved area of this Commonwealth under the auspices of a publicly supported all volunteer, nonprofit organization with no paid employees that sponsors the provision of health care to populations of underserved people throughout the world may apply for a **Registration for Voluntary Practice**.

This Sponsor Certification must accompany the Voluntary Practice Registration Application when submitted to the Virginia Board for Opticians at least 15 days prior to the voluntary provision of services.

TO BE COMPLETED BY A REPRESENTATIVE OF THE NONPROFIT ORGANIZATION SPONSORING THE VOLUNTEER PRACTICE.

Name of Nonprofit Organization _____
Sponsor/Representative of Nonprofit Organization _____
Title of Organization's Sponsor/Representative _____

Pursuant to 18 VAC 100-20-53 of the *Virginia Board for Opticians Regulations*, I hereby certify that the above-named organization is a publicly supported all volunteer, nonprofit organization with no paid employees that sponsors the provision of health care to populations of underserved people throughout the world. Furthermore, I attest to the organization's compliance with the provisions of § 54.1-1701(5) of the *Code of Virginia* and 18 VAC 100-20-53 of *Virginia Board for Opticians Regulations*.

Sponsor/Representative Signature _____ Date _____

Notarization

In the State of _____, City/County of _____, subscribed and sworn before me, the undersigned Notary Public in and for the City/County aforesaid this _____, day of _____, _____.
My commission expires the _____, day of _____, _____.

Affix official seal here.

Signature of Notary Public

GOVERNOR

EXECUTIVE ORDER NUMBER 51 (2003)

CONTINUING CERTAIN EMERGENCY DECLARATIONS DUE TO DISASTERS IN THE COMMONWEALTH

By virtue of the authority vested in me as Governor under Article V of the Constitution of Virginia and under the laws of the Commonwealth, including but not limited to Section 44-146.17 of the Code of Virginia, and subject always to my continuing and ultimate authority and responsibility to act in such matters, and to reserve powers, I hereby continue the states of emergency declared in the following executive orders for the purposes of continuing disaster recovery operations:

Executive Order Number Sixty-Six (1996), Declaration of a State of Emergency Throughout the Commonwealth of Virginia Arising From Hurricane Fran Which Resulted in Widespread Devastation and Property Losses Due to Heavy Rains, Flooding, and High Winds During the Period of September 5 through September 7, 1996, as continued in Executive Orders Seventy-Seven (1997), Sixteen (1998), Forty-Nine (1999), Sixty-Nine (2000) and Nineteen (2002).

Executive Order Number Twenty-Seven (1998), Declaration of a State of Emergency Throughout the Commonwealth of Virginia Arising From Hurricane Bonnie During the Period of August 25 through September 16, 1998, as continued in Executive Orders Forty-Nine (1999), Sixty-Nine (2000) and Nineteen (2002).

Executive Order Number Fifty-Nine (1999), Declaration of a state of emergency throughout portions of the Commonwealth arising from Tropical Storm Dennis as continued in Executive Order Sixty-Nine (2000) and Nineteen (2002).

Executive Order Number Sixty (1999), Declaration of a state of emergency for the entire Commonwealth due to Hurricane Floyd, as continued in Executive Order Sixty-Nine (2000) and Nineteen (2002). Executive Order Number Sixty-Three (2000), Declaration of a state of emergency for the entire Commonwealth due to winter storms, as continued in Executive Order Sixty-Nine (2000) and Nineteen (2002).

Executive Order Number Eighty-Two (2001), Declaration of a State of Emergency for Certain Localities in the Commonwealth of Virginia due to Significant Rains and Flooding in Southwest Virginia, as continued in Executive Order Nineteen (2002).

Executive Order Number Eighty-Three (2001), Declaration of a State of Emergency due to Terrorist Attack on the Pentagon in Arlington County, Virginia, as continued in Executive Order Nineteen (2002).

Executive Order Number 10 (2002), Declaration of a State of Emergency For The Commonwealth of Virginia Due to

Significant Rainfall and Flooding throughout Southwest Virginia, as continued in Executive Order Nineteen (2002).

Executive Order Number 13 (2002), Declaration of a State of Emergency Due to Severe Weather Damage Across the Commonwealth, as continued in Executive Order Nineteen (2002).

Executive Order Number 43 (2003), Declaration of a State of Emergency Throughout the Commonwealth Due to a Severe Winter Storm and Declaration of a Postponement of an Election in Greene County. In addition, "Throughout the Commonwealth" shall include the counties of Buchanan, Craig, Dickenson, Floyd, Grayson, Lee, Montgomery, Pulaski, Russell, Scott, Tazewell, Wise and Wythe, and the cities of Norton, Roanoke and Salem.

Executive Order Number 48 (2003), Declaration of a State of Emergency Due to Tornado and Severe Storm Damage Across the Commonwealth.

This Executive Order shall be effective upon its signing and shall remain in full force and effect until June 30, 2005, unless sooner amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia, this 30th day of June, 2003.

/s/ Mark R. Warner
Governor
Date: June 30, 2003

EXECUTIVE ORDER NUMBER 52 (2003)

CONTINUING CERTAIN GUBERNATORIAL COMMISSIONS

By virtue of the authority vested in me as Governor under Article V of the Constitution of Virginia and under the laws of the Commonwealth, including but not limited to Sections 2.2-103, 2.2-134, and 2.2-135 of the Code of Virginia, and subject to my continuing and ultimate authority and responsibility to act in such matters, I hereby continue the executive orders and the gubernatorial commissions as specified below.

Each continued commission is classified as a gubernatorial advisory commission in accordance with Sections 2.2-134 and 2.2-2100 of the Code of Virginia. Each commission shall have the specific duties and responsibilities and same sources and amounts of staff and financial support as estimated in its creating executive order, except that such estimates are hereby adjusted proportionally to reflect continuations of different duration than the creating executive orders.

Executive Order 25 (02), which created the Virginia Environmental Education Commission, is retroactively continued from June 26, 2003 to June 26, 2004.

Executive Order 30 (02), which established the Governor's Armenian Advisory Commission, is continued from July 18, 2003 to July 18, 2004.

Executive Order 35 (02), which created the Governor's Advisory Commission on Minority Business Enterprise, is continued from June 30, 2003 to June 30, 2004.

These commissions shall continue their efforts to fulfill their specific duties and responsibilities as outlined in their creating executive orders, subject to additional guidance and revised deadlines as the Governor may from time to time direct.

This executive order shall be effective immediately upon its signing and shall remain in full force and effect until January 14, 2006, unless amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia this the 30th day of June, 2003.

/s/ Mark R. Warner
Governor
Date: June 30, 2003

EXECUTIVE ORDER NUMBER 53 (2003)

DESIGNATION OF EXECUTIVE BRANCH OFFICERS AND EMPLOYEES REQUIRED TO FILE FINANCIAL DISCLOSURE STATEMENTS

The State and Local Government Conflict of Interest Act reflects the Commonwealth's continuing commitment that the judgment of public officers and employees will not be compromised or affected by inappropriate conflicts between the personal economic interests and the official duties of Virginia's public servants.

In furtherance of the purposes of the State and Local Government Conflict of Interests Act, Section 2.2-3100 et seq. of the Code of Virginia (hereinafter, "the Act"), and by virtue of the authority vested in me as Governor under Article V of the Constitution of Virginia and under the laws of the Commonwealth, including but not limited to Sections 2.2-104, 2.2-110, and 2.2-3114 of the Code of Virginia, and subject always to my continuing and ultimate authority and responsibility to act in such matters and to reserve powers, I hereby delegate to the Secretary of the Commonwealth the power and duty to implement the Act and to designate offices or positions in Executive Branch agencies, institutions, boards, commissions, councils and authorities through the following policies and procedures:

1. All non-salaried citizen members of Executive Branch advisory boards, commissions, councils and authorities are hereby designated to file the financial disclosure form included in Section 2.2-3118.

2. In order that all appropriate Executive Branch officers and employees may be designated to file the statement of economic interests set out in the Act, each of the Governor's Secretaries shall submit to the Office of the Secretary of the Commonwealth by October 1, 2003, a report identifying:

(a) Each position within the Secretary's jurisdiction, whether classified or non-classified, which involves substantive responsibility for inspection,

investigation, licensure, or other regulation of the activities of private firms, organizations, or professions; and

(b) Each position within the Secretary's jurisdiction, whether classified or non-classified, which involves substantive responsibility for procurement, audit, investment, or other activities that could be subject to abuse or improper influence as a result of the personal economic interests of the officeholder or employee.

3. The Secretary of the Commonwealth shall prepare from the reports submitted pursuant to Paragraph 2 of this order a comprehensive list of officers and employees who shall be required to file the statement of economic interests set out in the Act. The Secretary of the Commonwealth, with the assistance and cooperation of the Governor's Secretaries, shall maintain this list, shall review and revise it annually to reflect the creation and abolition of offices and positions, and shall annually inform each officer and employee listed of his or her obligation to file the statement of economic interests in accordance with Section 2.2-3114 of the Code of Virginia.

4. The head of each agency, institution, board, commission, council and authority within the Executive Branch shall assist the Governor's Secretaries and the Secretary of the Commonwealth in compiling the information required by this Executive Order, in ensuring that appropriate additions to and deletions from the list of those designated to file the statement of economic interests are recommended in a timely fashion, and in ensuring that designated officers and employees file their statements of economic interests in accordance with Section 2.2-3114 of the Code of Virginia.

5. The head of each agency, institution, board, commission, council and authority within the Executive Branch shall be responsible for acquiring a statement of economic interests from each new officer or employee so long as the officer or employee is hired for a position previously designated.

6. The head of each agency, institution, board, commission, council and authority within the Executive Branch shall communicate to the officers, employees, and members within his or her jurisdiction the importance and necessity of maintaining the highest standards of conduct, and avoiding even the appearance of impropriety arising out of personal economic interests and the conduct of the business of the Commonwealth.

This Executive Order shall be effective upon its signing and shall remain in full force and effect until June 30, 2006, unless sooner amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia this 30th day of June, 2003.

/s/ Mark R. Warner
Governor
Date: June 30, 2003

GUIDANCE DOCUMENTS

Sections 2.2-4008 and 2.2-4103 of the Code of Virginia require annual publication in the *Virginia Register* of guidance document lists from state agencies covered by the Administrative Process Act and the Virginia Register Act. A guidance document is defined as "...any document developed by a state agency or staff that provides information or guidance of general applicability to the staff or public to interpret or implement statutes or the agency's rules or regulations..." Agencies are required to maintain a complete, current list of all guidance documents and make the full text of such documents available to the public.

Generally, the format for the guidance document list is: document number (if any), title of document, date issued or last revised, and citation of Virginia Administrative Code regulatory authority or Code of Virginia statutory authority. Questions concerning documents or requests for copies of documents should be directed to the contact person listed by the agency.

ALCOHOLIC BEVERAGE CONTROL BOARD

Copies of the following documents may be viewed during regular work days from 8:15 a.m. until 5 p.m. in the office of the Virginia Alcoholic Beverage Control Board, 2901 Hermitage Road, Richmond, VA 23220. Copies may be obtained free of charge from and questions regarding interpretation or implementation of these documents may be directed to Dorothy J. Hollahan, Senior Policy Analyst, at the same address, telephone (804) 213-4458, FAX (804) 213-4486 or e-mail djholln@abc.state.va.us.

Guidance Documents:

Licensee Newsletters, issued quarterly

Application for License, revised January 1996, § 4.1-230

Retail Licensee Guide, revised 2001, 3 VAC 5

The ABC Licensing Process, issued 1998, § 4.1-230

Licensee Bulletin, Vol. 56, No. 1, revised March, 2000, 3 VAC 5

Licensee Bulletin, Vol. 56, No. 2, revised March, 2000, 3 VAC 5

Licensee Bulletin, Vol. 56, No. 3, revised March, 2000, 3 VAC 5

Licensee Bulletin, Vol. 56, No. 4, revised March, 2000, 3 VAC 5

Wholesale Licensee Bulletin, revised Fall 1997, 3 VAC 5

Farm Winery Remote—Festivals Bulletin, issued March, 2000, § 4.1-207

Circular Letter 84-3, issued November 1, 1984, § 4.1-216

Circular Letter 84-4, issued December 26, 1984, 3 VAC 5

Circular Letter 84-7, issued December 26, 1984, 3 VAC 5

Circular Letter 84-8, issued December 26, 1984, 3 VAC 5

Circular Letter 85-3, issued February 6, 1985, 3 VAC 5

Circular Letter 85-5, issued March 26, 1985, 3 VAC 5

Circular Letter 85-6, issued May 31, 1985, 3 VAC 5

Circular Letter 85-9, issued June 3, 1985, 3 VAC 5

Circular Letter 85-10, issued June 3, 1985, 3 VAC 5

Circular Letter 87-1, issued January 28, 1987, § 4.1-216

Circular Letter 87-2, issued March 19, 1987, 3 VAC 5

Circular Letter 88-2, issued July 22, 1988, § 4.1-239

Circular Letter 88-3, issued September 7, 1988, § 4.1-216

Circular Letter 88-5, issued November 29, 1988, 3 VAC 5

Circular Letter 89-1, issued April 14, 1989, 3 VAC 5

Circular Letter 89-4, issued October 13, 1989, § 4.1-225

Circular Letter 90-1, issued March 1, 1990, § 4.1-225

Circular Letter 90-2, issued March 1, 1990, 3 VAC 5

Circular Letter 90-4, issued June 27, 1990, 3 VAC 5

Circular Letter 92-1, issued May 22, 1992, § 4.1-225

Circular Letter 92-2, issued November 23, 1992, 3 VAC 5

Circular Letter 94-1, issued March 16, 1994, § 4.1-225

Circular Letter 98-1, issued Spring 1998, 3 VAC 5

Circular Letter 98-2, issued Spring 1998, § 4.1-207

Circular Letter 01-1, issued April, 9, 2001, §§ 4.1-216 and 4.1-323, 3 VAC 5

Circular Letter 01-2, issued June 18, 2001, 3 VAC 5

GENERAL NOTICES/ERRATA

DEPARTMENT OF ENVIRONMENTAL QUALITY

Total Maximum Daily Loads (TMDLs) Hawksbill Creek

The Department of Environmental Quality (DEQ) and the Department of Conservation and Recreation (DCR) seek written and oral comments from interested persons on the development of Total Maximum Daily Loads (TMDLs) for Hawksbill Creek. This stream is listed on the 1996 303 (d) TMDL Priority List and Report as impaired due to violations of the state's water quality standards for bacteria. The Hawksbill Creek stream segment is located in Page County. It is 19.3 miles in length and begins at the headwaters and continues to the confluence with the South Fork of the Shenandoah River.

Section 303 (d) of the Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia require DEQ to develop TMDLs for pollutants responsible for each impaired water contained in Virginia's 303 (d) TMDL Priority List and Report.

The first public meeting on the development of this TMDL will be held on Tuesday, August 26, 2003, 7 p.m. at the Page County Circuit Court Room, 116 South Court Street, Luray, VA 22835.

The public comment period for this phase of the TMDL development will end on September 25, 2003. A fact sheet on the development of this TMDL is available upon request. Questions or information requests should be addressed to Robert Brent. Written comments should include the name, address, and telephone number of the person submitting the comments and should be sent to Robert Brent, Department of Environmental Quality, P.O. Box 3000, Harrisonburg, VA 22801, telephone (540) 574-7848, FAX (540) 574-7878, or e-mail rbrent@deq.state.va.us.

Total Maximum Daily Loads (TMDLs) Smith Creek

The Department of Environmental Quality (DEQ) and the Department of Conservation and Recreation (DCR) seek written and oral comments from interested persons on the development of Total Maximum Daily Loads (TMDLs) for Smith Creek. This stream is listed on the 1996 303 (d) TMDL Priority List and Report as impaired due to violations of the state's water quality standards for bacteria and the General Standard (benthics). The Smith Creek stream segment is located in Rockingham and Shenandoah Counties. It is 31.18 miles in length and begins at the headwaters and continues to the confluence with the North Fork of the Shenandoah River.

Section 303 (d) of the Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia require DEQ to develop TMDLs for pollutants responsible for each impaired water contained in Virginia's 303 (d) TMDL Priority List and Report.

The first public meeting on the development of these TMDLs will be held on Wednesday, August 27, 2003, 7 p.m. at the Arthur L. Hildreth, Jr. Municipal Building, 9418 John Sevier Road, New Market, VA 22844.

The public comment period for this phase of the TMDL development will end on September 26, 2003. A fact sheet on the development of these TMDLs is available upon request. Questions or information requests should be addressed to Robert Brent. Written comments should include the name, address, and telephone number of the person submitting the comments and should be sent to Robert Brent, Department of Environmental Quality, P.O. Box 3000, Harrisonburg, VA 22801, telephone (540) 574-7848, FAX (540) 574-7878, or e-mail rbrent@deq.state.va.us.

DEPARTMENT OF HEALTH

Periodic Reviews of Regulations

In accordance with Virginia law and executive order, the Department of Health has devised a schedule for reviewing all regulations administered by it that have not been recently amended. During a period beginning August 11, 2003, and ending September 15, 2003, the Department of Health will conduct periodic reviews of the following regulations:

12 VAC 5-20, Regulations for the Conduct of Human Research.

12 VAC 5-70, Regulations Governing the Newborn Screening and Treatment Program.

12 VAC 5-160, Regulations for the Sanitary Control of the Picking, Packing and Marketing of Crab Meat for Human Consumption.

12 VAC 5-216, Methodology to Measure Efficiency and Productivity of Health Care Institutions.

12 VAC 5-405, Regulations Governing Private Review Agents.

12 VAC 5-462, Swimming Pool Regulations Governing the Posting of Water Quality Results.

12 VAC 5-490, Virginia Radiation Protection Regulations: Fee Schedule.

12 VAC 5-530, Regulations Governing the Virginia Medical Scholarship Program.

12 VAC 5-570, Sanitary Regulations for Marinas and Boat Moorings.

12 VAC 5-600, Waterworks Operation Fee.

12 VAC 5-610, Sewage Handling and Disposal Regulations.

Comments may be directed during the review period to Douglas R. Harris, Virginia Department of Health, Office of the Commissioner, 1500 E. Main St., Suite 227, Richmond, VA 23219, dharris@vdh.state.va.us.

State WIC Plan

The Virginia Department of Health (VDH) invites the public to comment on the development of a plan to administer the Special Supplemental Nutrition Program for Women, Infants and Children (the WIC program) in Virginia.

General Notices/Errata

Pursuant to 7 CFR 246.4, the responsible agency in each state that administers a WIC program must submit annually to the U.S. Department of Agriculture (USDA) a State Agency Plan for each fiscal year as a prerequisite to receiving federal funds. The Virginia Department of Health (VDH) administers the Virginia WIC Program and must submit such a plan by August 14, 2003.

The development of the Virginia State Agency Plan is underway and the public is invited to comment on its development and to view the Plan during regular workdays from 8:30 a.m. until 4:30 p.m. in the offices of VDH, Division of WIC and Community Nutrition Services, 1500 East Main Street, Room 135, Richmond, Virginia 23219.

Questions regarding development and implementation of the Plan may be directed to Bernice Parker, Policy Coordinator, Department of Health, Division of WIC, 1500 East Main Street, Richmond, VA 23219, telephone (804) 786-5420, or e-mail bwarker@vdh.state.va.us.

BOARD FOR PROFESSIONAL AND OCCUPATIONAL REGULATION

Study of the Need to Regulate Photogrammetry

The Board for Professional and Occupational Regulation invites public comment on the need to regulate the practice of photogrammetry. This review is being conducted pursuant to § 54.1-310 of the Code of Virginia.

Written comments will be received until 5 p.m. on Friday, October 10, 2003. Comments or questions should be sent to Mark N. Courtney, Executive Director, Department of Professional and Occupational Regulation, 3600 W. Broad Street, Richmond, Virginia 23230, telephone (804) 367-8514, or e-mail BPOR@dpor.state.va.us.

Public hearings will be held on the following dates and times at the following locations:

August 19, 2003 - 10 a.m.
Roanoke City Council Chambers
Noel C. Taylor Municipal Bldg, 4th Flr.
215 Church Ave, SW
Roanoke, Virginia 24011

August 28, 2003 - 10 a.m.
City of Chesapeake Council Chambers
306 Cedar Road
Chesapeake, Virginia 23322

September 22, 2003 - 10 a.m.
Department of Professional and Occupational Regulation
3600 West Broad St., Conf. Rm. 5W
Richmond, Virginia 23230

October 1, 2003 - 10 a.m.
Arlington County Board Chambers
#1 Court House Square
2100 Clarendon Blvd
Arlington, Virginia 22201

Study on the Use of Voice Stress Analyzers

The Board for Professional and Occupational Regulation invites public comment on the use of voice stress analyzers. This review is being conducted following the passage of House Bill 2812 and Senate Bill 1296 from the 2003 General Assembly session.

Written comments will be received until 5 p.m. on Friday, October 10, 2003. Comments or questions should be sent to Eric L. Olson, Executive Director, Department of Professional and Occupational Regulation, 3600 W. Broad Street, Richmond, Virginia 23230, telephone (804) 367-2785, or e-mail BPOR@dpor.state.va.us.

Public hearings will be held on the following dates and times at the following locations:

August 19, 2003 - 1:30 p.m.
Roanoke City Council Chambers
Noel C. Taylor Municipal Bldg, 4th Flr.
215 Church Ave, SW
Roanoke, Virginia 24011

August 28, 2003 - 1:30 p.m.
City of Chesapeake Council Chambers
306 Cedar Road
Chesapeake, Virginia 23322

September 22, 2003 - 1:30 p.m.
Department of Professional and Occupational Regulation
3600 West Broad St., Conf. Rm. 5W
Richmond, Virginia 23230

October 1, 2003 - 1:30 p.m.,
Arlington County Board Chambers
#1 Court House Square
2100 Clarendon Blvd.
Arlington, Virginia 22201

STATE LOTTERY DEPARTMENT

The following Director's Orders of the State Lottery Department were filed with the Virginia Registrar of Regulations on July 14, 2003. The orders may be viewed at the State Lottery Department, 900 E. Main Street, Richmond, Virginia or at the office of the Registrar of Regulations, 910 Capitol Street, 2nd Floor, Richmond, Virginia.

Director's Order Number Seventeen (03)
Virginia's Instant Game Lottery 559; "Double Blackjack" (effective 04/11/03)

Director's Order Number Eleven (03)
Virginia's Instant Game Lottery 561; "Mega Bucks" (effective 03/11/03)

Director's Order Number Twenty-Nine (29)
Virginia's Instant Game Lottery 248; "Reel Cash" (effective 06/09/03)

Director's Order Number Thirty-Three (03)

Virginia's Instant Game Lottery 557; "Extreme Green"
(effective 06/30/03)

Director's Order Number Thirty-Four (03)

Virginia's Instant Game Lottery 576; "Corvette Summer"
(effective 06/30/03)

DIRECTOR'S ORDER NUMBER THIRTY-EIGHT (03)

CERTAIN VIRGINIA INSTANT GAME LOTTERIES; END OF GAMES.

In accordance with the authority granted by §§ 2.2-4002 B(15) and 58.1-4006 A of the Code of Virginia, I hereby give notice that the following Virginia Lottery instant games will officially end at midnight on July 25, 2003:

Game 229 – Wild Hare
Game 233 – Fish Bowl
Game 241 – 3 Sows and Bucks
Game 246 – Cash Tripler
Game 319 – Special Edition Bingo
Game 491 – \$100,000 Casino
Game 500 – Paydirt
Game 512 – Money Carlo
Game 517 – One for the Money
Game 521 – Double Luck
Game 525 – Ancient Treasures
Game 540 – Lucky Dice
Game 548 - Poker Royale

The last day for lottery retailers to return for credit unsold tickets from any of these games will be August 29, 2003. The last day to redeem winning tickets for any of these games will be January 21, 2004, 180 days from the declared official end of the game. Claims for winning tickets from any of these games will not be accepted after that date. Claims that are mailed and received in an envelope bearing a postmark of the United States Postal Service or another sovereign nation of January 21, 2004, will be deemed to have been received on time. This notice amplifies and conforms to the duly adopted State Lottery Board regulations for the conduct of lottery games.

This order is available for inspection and copying during normal business hours at the State Lottery Department headquarters, 900 East Main Street, Richmond, Virginia; and at any State Lottery Department regional office. A copy may be requested by mail by writing to: Public Affairs Office, State Lottery Department, 900 East Main Street, Richmond, Virginia 23219.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect unless amended or rescinded by further Director's Order.

/s/ Frank S. Ferguson, General Counsel and
Director of Legislative and Regulatory Affairs
Date: July 9, 2003

STATE WATER CONTROL BOARD

Proposed Consent Special Order C. Eugene Smith

The State Water Control Board proposes to enter into a consent special order with the C. Eugene Smith D/B/A Canaan Valley Estates to resolve violations of the State Water Control Law and regulations at the Canaan Valley Estates wastewater treatment plant in Rockbridge County, Virginia. The facility discharges to Linkswiler Branch in the Upper James River basin.

In February 2000 the facility began to experience period difficulty complying with the permit's effluent limitations for BOD. The facility has experienced periodic effluent limitation violations for BOD since that time.

The Proposed Consent Special Order settles outstanding notices of violation and assesses a civil charge for the violations.

The board will receive written comments relating to the Proposed Consent Special Order for 30 days from the date of publication of this notice. Comments should be addressed to Steven W. Hetrick, Department of Environmental Quality, P.O. Box 3000, Harrisonburg, VA 22801, and should refer to the consent special order. Comments may also be submitted via electronic mail to swhetrick@deq.state.va.us. In order to be considered, electronic comments must be received prior to the close of the comment period and must include the name, address, and telephone number of the person making the comment.

The proposed order may be examined at the Department of Environmental Quality, Valley Regional Office, 4411 Early Road, Harrisonburg, Virginia 22801. A copy of the order may be obtained in person or by mail from this office.

Consent Special Order City Of Lynchburg

The Department of Environmental Quality, on behalf of the State Water Control Board and the City of Lynchburg, have agreed to a Consent Special Order in settlement of a civil enforcement action under the Virginia State Water Control Law permit regulation 9 VAC 25-210 and § 401 of the Clean Water Act regarding the Enterprise Drive development project. The department will consider written comments relating to this order until 5 p.m. on September 11, 2003. Comments must include name, address, and telephone number and can be e-mailed to hfwaggoner@deq.state.va.us or mailed to Harry F. Waggoner, DEQ - South Central Regional Office, 7705 Timberlake Road, Lynchburg, VA 24502.

The order is available at www.deq.state.va.us/enforcement/notices.html and at the above office during regular business hours. You may request copies from Mr. Waggoner by calling him at (434) 582-5120.

General Notices/Errata

Proposed Consent Special Order C. L. Custer, Inc.

The State Water Control Board (Board) proposes to enter into a Consent Special Order with C. L. Custer, Inc. (Custer). The parties have agreed to the terms of an order for settlement of violations of State Water Control Law at their AST facility located at 2010 W. Market Street in Harrisonburg, Virginia.

Custer is the owner and operator of an above-ground storage tank (AST) facility within the meaning of § 62.1-44.34:14 of the Code of Virginia. On November 5, 2002, an employee of Custer overfilled the 17,000-gallon horizontal diesel AST during a rain event at night and failed to observe the discharge or report it. The discharge, which was approximated at 550 gallons, flowed out the dike through the open dike valve, across the facility parking lot and into a storm drainage ditch. The discharge flowed through the storm drainage ditch under US Route 33 to the south side of the highway and into a stream traveling through a Harrisonburg golf course. A golf course employee noticed the presence of diesel in the stream and reported it to Harrisonburg Fire Department on November 6, 2002. This discharge occurred in an apparent violation of State Water Control Law § 62.1-44.34:18 of the Code of Virginia. The proposed order requires Custer to address and correct certain deficiencies noted by Department of Environmental Quality (DEQ) inspectors at the AST facility, to provide to DEQ a design plan, written summary, and schedule of improvements for planned facility upgrades within 45 days of the execution of the proposed order, and to complete all planned AST facility upgrades prior to September 30, 2003. The proposed order would also assess a civil charge against Custer in settlement of the violations.

The board will receive written comments relating to the proposed order until September 11, 2003. Comments should be addressed to Ricard J. Dunay, Department of Environmental Quality, P.O. Box 3000, Harrisonburg, VA. 22801, and should refer to the order. The proposed order may be examined at the Department of Environmental Quality, Valley Regional Office, 4411 Early Road, Harrisonburg, VA. A copy of the order may be obtained in person or by mail from the DEQ office.

Comments may also be submitted via electronic mail to rjdunay@deq.state.va.us. In order to be considered, electronic comments must be received prior to the close of the comment period and must include the name, address and telephone number of the person making the comment.

Consent Special Order Country Oaks, L.L.C.

The Department of Environmental Quality, on behalf of the State Water Control Board and Country Oaks, L.L.C., have agreed to a Consent Special Order in settlement of a civil enforcement action under the Virginia State Water Control Law permit regulation 9 VAC 25-31 regarding the wastewater treatment plant at Carriage Hill Mobile Home Park near Danville, Virginia. The department will consider written comments relating to this order until 5 p.m. on September 11, 2003. Comments must include name, address, and telephone

number and can be e-mailed to hfwaggoner@deq.state.va.us or mailed to: Harry F. Waggoner, DEQ –

South Central Regional Office, 7705 Timberlake Road, Lynchburg, VA 24502.

The order is available at www.deq.state.va.us/enforcement/notices.html and at the above office during regular business hours. You may request copies from Mr. Waggoner by calling him at (434) 582-5120.

Proposed Consent Special Order Pepper's Ferry Regional Wastewater Treatment Authority

The State Water Control Board (SWCB) proposes to issue a Consent Special Order (CSO) to Pepper's Ferry Regional Wastewater Treatment Authority regarding settlement of a civil enforcement action related to compliance with the Permit Regulation, 9 VAC 25-31. On behalf of the SWCB, the department will consider written comments relating to this settlement until September 11, 2003. Comments should be addressed to Robert Steele, DEQ - West Central Regional Office, 3019 Peters Creek Road, NW, Roanoke, VA 24019.

The final CSO is available at www.deq.state.va.us/enforcement/notices.html and at the above office during regular business hours. You may also request copies from Mr. Steele at the address above or by calling him at (540) 562-6777.

Consent Order Amendment Smith Mountain Lake 4-H Educational Conference Center

The Virginia Department of Environmental Quality, State Water Control Board and the Smith Mountain Lake 4-H Educational Conference Center have agreed to a Consent Order amendment under the State Water Control Law, regarding the facility in Franklin County, Virginia. The department will consider written comments relating to this action until September 11, 2003. Comments must include name, address, and phone number and can be e-mailed to jrford@deq.state.va.us or mailed to Mr. Jerry R. Ford, Jr., DEQ – West Central Regional Office, 3019 Peters Creek Road, Roanoke, VA 24019.

The amendment is available at www.deq.state.va.us/enforcement/notices.html and at the above office during regular business hours. You may also request copies from Jerry R. Ford, Jr. at the address above or by calling him at (540) 562-6817.

VIRGINIA CODE COMMISSION Notice to State Agencies

Mailing Address: Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219, FAX (804) 692-0625.

Forms for Filing Material for Publication in *The Virginia Register of Regulations*

All agencies are required to use the appropriate forms when furnishing material for publication in the Virginia Register of Regulations. The forms may be obtained from: Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591.

Internet: Forms and other Virginia Register resources may be printed or downloaded from the Virginia Register web page: <http://register.state.va.us>

FORMS:

NOTICE of INTENDED REGULATORY ACTION-RR01
NOTICE of COMMENT PERIOD-RR02
PROPOSED (Transmittal Sheet)-RR03
FINAL (Transmittal Sheet)-RR04
EMERGENCY (Transmittal Sheet)-RR05
NOTICE of MEETING-RR06
AGENCY RESPONSE TO LEGISLATIVE OBJECTIONS-RR08
PETITION FOR RULEMAKING-RR13

CALENDAR OF EVENTS

Symbol Key

† Indicates entries since last publication of the *Virginia Register*

♿ Location accessible to persons with disabilities

☎ Teletype (TTY)/Voice Designation

NOTICE

Only those meetings which are filed with the Registrar of Regulations by the filing deadline noted at the beginning of this publication are listed. Since some meetings are called on short notice, please be aware that this listing of meetings may be incomplete. Also, all meetings are subject to cancellation and the *Virginia Register* deadline may preclude a notice of such cancellation. If you are unable to find a meeting notice for an organization in which you are interested, please check the Commonwealth Calendar at www.vipnet.org or contact the organization directly.

For additional information on open meetings and public hearings held by the standing committees of the legislature during the interim, please call Legislative Information at (804) 698-1500 or Senate Information and Constituent Services at (804) 698-7410 or (804) 698-7419/TTY☎, or visit the General Assembly web site's Legislative Information System (<http://leg1.state.va.us/lis.htm>) and select "Meetings."

VIRGINIA CODE COMMISSION

EXECUTIVE

BOARD OF ACCOUNTANCY

August 12, 2003 - 10 a.m. -- Open Meeting

Department of Professional and Occupational Regulation, 3600 West Broad Street, Suite 696, Richmond Virginia.♿ (Interpreter for the deaf provided upon request)

A meeting of the Enforcement Committee for discussion and review of open cases.

Contact: Nancy Taylor Feldman, Executive Director, Board of Accountancy, 3600 W. Broad St., Suite 696, Richmond VA 23230, telephone (804) 367-8505, FAX (804) 367-2174, (804) 367-9753/TTY☎, e-mail boa@boa.state.va.us.

COMMONWEALTH COUNCIL ON AGING

† **September 4, 2003 - 9 a.m.** -- Open Meeting

Department for the Aging, 1600 Forest Avenue, Suite 102, Richmond, Virginia.♿ (Interpreter for the deaf provided upon request)

A regular business meeting of the Public Relations Committee.

Contact: Robin Brannon, Communications Director, Department for the Aging, 1600 Forest Ave., Suite 102, Richmond, VA 23229, telephone (804) 662-9323.

† **September 4, 2003 - 10 a.m.** -- Open Meeting

Department for the Aging, 1600 Forest Avenue, Suite 102, Richmond, Virginia.♿ (Interpreter for the deaf provided upon request)

A regular business meeting. Public comments are welcome.

Contact: Marsha Mucha, Department for the Aging, 1600 Forest Ave., Suite 102, Richmond, VA 23229, telephone (804) 662-9312.

VIRGINIA AGRICULTURAL COUNCIL

August 25, 2003 - 8:30 a.m. -- Open Meeting

August 26, 2003 - 9 a.m. -- Open Meeting

AmeriSuites, 1020 Plantation Road, Blacksburg, Virginia.♿ (Interpreter for the deaf provided upon request)

The council meeting will be held for two days, August 25 and August 26, 2003. The meeting on August 25 will start at 8:30 a.m. and at 10 a.m. the council will begin a tour of various agricultural research interests at Virginia Tech. The meeting on August 26 will start at 9 a.m. to act upon financial and business affairs. The council will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodation in order to participate at the meeting should contact Thomas Yates at least five days before the meeting date so that suitable arrangements can be made.

Contact: Thomas R. Yates, Executive Director, Department of Agriculture and Consumer Services, 1100 Bank St., Room 509, Richmond, VA 23219, telephone (804) 786-6060, FAX (804) 371-8372, (800) 828-1120/TTY☎, e-mail tyates@vdacs.state.va.us.

BOARD OF AGRICULTURE AND CONSUMER SERVICES

† **September 26, 2003 - 9 a.m.** -- Open Meeting

Department of Agriculture and Consumer Services, Washington Building, 1100 Bank Street, Suite 211, Richmond, Virginia.♿

A meeting to discuss issues related to Virginia agriculture and consumer services. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodation in order to participate at the meeting should contact Roy Seward at least five days before the meeting date so that suitable arrangements can be made.

Contact: Roy Seward, Board Secretary, Department of Agriculture and Consumer Services, Washington Bldg., 1100 Bank St., Richmond, VA 23219, telephone (804) 786-3538, FAX (804) 371-2945, e-mail jknight@vdacs.state.va.us.

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

NOTE: EXTENSION OF PUBLIC COMMENT PERIOD

September 2, 2003 - Public comments may be submitted until 5 p.m. on this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Agriculture and Consumer Services intends to amend regulations entitled: **2 VAC 5-20, Standards for Classification of Real Estate as Devoted to Agricultural Use and to Horticultural Use under the Virginia Land Use Assessment Law.** The purpose of the proposed action is to review the regulation for effectiveness and continued need, including amending the regulation to satisfy the statutory amendment made by Chapter 705 of the 2001 Acts of Assembly. Under that provision, localities are authorized to waive, with respect to real estate devoted to the production of crops that require more than two years from initial planting until commercially feasible harvesting, any requirement contained in the regulation that requires the real estate to have been used for a particular purpose for a minimum length of time before qualifying as real estate devoted to agricultural or horticultural use. The Commissioner of Agriculture and Consumer Services is to promulgate regulations to carry out the provisions of the act.

Statutory Authority: § 58.1-3230 of the Code of Virginia; Chapter 705 of the 2001 Acts of Assembly.

Contact: Lawrence H. Redford, Regulatory Coordinator, Department of Agriculture and Consumer Services, 1100 Bank St., Room 211, Richmond, VA 23219, telephone (804) 371-8067, FAX (804) 371-2945, or e-mail redford@vdacs.state.va.us.

† **October 16, 2003 - 9 a.m.** -- Public Hearing
City Council Chambers, City Hall, 715 Princess Anne Street, Fredericksburg, Virginia. ☎

A public hearing on proposed amendments to 2 VAC 20-30, Regulations Governing the Pesticide Fees Charged by the Department of Agriculture and Consumer Services Under the Virginia Pesticide Control Act.

Contact: Marvin A. Lawson, Director, Department of Agriculture and Consumer Services, Washington Bldg., 1100 Bank St.; Room 401, Richmond, VA 23219, telephone (804) 786-3534, FAX (804) 786-5112, toll-free (800) 552-9963, (800) 828-1120/TTY ☎, e-mail mlawson@vdacs.state.va.us.

Virginia Cotton Board

August 21, 2003 - 2 p.m. -- Open Meeting
Tidewater Agriculture Research and Extension Center, 6321 Holland Road, Suffolk, Virginia. ☎

The board will meet to approve minutes of the last meeting. In addition, the board will review financial reports and the status of current projects and contracts, discuss priorities for future funding initiatives, and take up any other business that may come before the board. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs

any accommodation in order to participate at the meeting should contact the person identified in this notice at least five days before the meeting date so that suitable arrangements can be made.

Contact: Gail Moody Milteer, Program Director, Virginia Cotton Board, 1100 Armory Dr., Suite 120, Franklin, VA 23851, telephone (757) 569-1100, FAX (757) 562-6104.

Virginia Horse Industry Board

August 25, 2003 - 10 a.m. -- Open Meeting
Virginia Department of Forestry, 900 Natural Resources Drive, 2nd Floor Meeting Room, Charlottesville, Virginia. ☎

The board will review the minutes of the last meeting, its current financial status, and on-going projects. The board will also discuss promotional plans and activities for FY 2003-2004. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodation in order to participate at the meeting should contact Andrea S. Heid at least five days before the meeting date so that suitable arrangements can be made.

Contact: Andrea S. Heid, Equine Marketing Specialist/Program Manager, Department of Agriculture and Consumer Services, 1100 Bank St., 9th Floor, Richmond, VA 23219, telephone (804) 786-5842, FAX (804) 786-3122.

STATE AIR POLLUTION CONTROL BOARD

August 20, 2003 - 10 a.m. -- Public Hearing
Department of Environmental Quality, 629 East Main Street, Richmond, Virginia.

September 12, 2003 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Air Pollution Control Board intends to amend regulations entitled **9 VAC 5-140, Regulation for Emission Trading.** The purpose of the proposed action is to correct an EPA-identified deficiency in the banking provisions of the No_x Budget Trading Program regulation with regard to the state date for flow control.

Statutory Authority: §§ 10.1-1308 and 10.1-1322.3 of the Code of Virginia.

Contact: Mary E. Major, Environmental Program Manager, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4423, FAX (804) 698-4510 or e-mail memajor@deq.state.va.us.

August 26, 2003 - 9 a.m. -- Public Hearing
Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Boulevard, Virginia Beach, Virginia.

September 12, 2003 - Public comments may be submitted until this date.

Calendar of Events

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Air Pollution Control Board intends to amend regulations entitled **9 VAC 5-20, General Provisions (Rev. G02)**. The purpose of the proposed action is enlarge the scope of the Hampton Roads Emissions Control Area.

Statutory Authority: § 10.1-1308 of the Code of Virginia.

Contact: Kathleen R. Sands, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4413, FAX (804) 698-4510 or e-mail krsands@deq.state.va.us.

August 26, 2003 - 9 a.m. -- Public Hearing
Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Boulevard, Virginia Beach, Virginia.

August 26, 2003 - 1:30 p.m. -- Public Hearing
Department of Environmental Quality, 4411 Early Road, Harrisonburg, Virginia.

September 12, 2003 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Air Pollution Control Board intends to amend regulations entitled **9 VAC 5-20, General Provisions, and 9 VAC 5-40, Existing Stationary Sources (Rev. C03)**. The purpose of the proposed action is enlarge the scope of volatile organic compound (VOC) emissions control areas in order to include potential new ozone nonattainment areas. This action is being taken to implement a program established by the U.S. Environmental Protection Agency (EPA) for areas potentially designated as nonattainment under the eight-hour ozone standard. This program establishes such areas to avoid the nonattainment designation through early reduction credits.

Statutory Authority: § 10.1-1308 of the Code of Virginia.

Contact: Karen G. Sabasteanski, Policy Analyst, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4426, FAX (804) 698-4510 or e-mail kgsabastea@deq.state.va.us.

August 26, 2003 - 9 a.m. -- Public Hearing
Department of Environmental Quality, Fredericksburg Satellite Office, 806 Westwood Office Park, Conference Room, Fredericksburg, Virginia.

September 12, 2003 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Air Pollution Control Board intends to amend regulations entitled **9 VAC 5-20, General Provisions, and 9 VAC 5-40, Existing Stationary Sources (Rev. C02)**. The purpose of the proposed action is to achieve necessary VOC emissions reductions to stay

within the budget limit in order to safeguard federal approval of transportation projects in Northern Virginia.

Statutory Authority: § 10.1-1308 of the Code of Virginia.

Contact: Kathleen R. Sands, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4413, FAX (804) 698-4510 or e-mail krsands@deq.state.va.us.

ALCOHOLIC BEVERAGE CONTROL BOARD

August 11, 2003 - 9 a.m. -- Open Meeting
August 25, 2003 - 9 a.m. -- Open Meeting
September 8, 2003 - 9 a.m. -- Open Meeting
September 22, 2003 - 9 a.m. -- Open Meeting
October 14, 2003 - 9 a.m. -- Open Meeting
October 27, 2003 - 9 a.m. -- Open Meeting
† November 10, 2003 - 9 a.m. -- Open Meeting
Department of Alcoholic Beverage Control, 2901 Hermitage Road, Richmond, Virginia. ☎

A meeting to receive and discuss reports and activities from staff members. Other matters are not yet determined.

Contact: W. Curtis Coleburn, III, Secretary to the Board, Alcoholic Beverage Control Board, P.O. Box 27491, Richmond, VA 23261, telephone (804) 213-4409, FAX (804) 213-4442, e-mail wccolen@abc.state.va.us.

ALZHEIMER'S DISEASE AND RELATED DISORDERS COMMISSION

† September 12, 2003 - 10 a.m. -- Open Meeting
Department for the Aging, 1600 Forest Avenue, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A regular meeting.

Contact: Janet L. Honeycutt, Director of Grant Operations, Alzheimer's Disease and Related Disorders Commission, 1600 Forest Ave., Suite 102, Richmond, VA, telephone (804) 662-9333, FAX (804) 662-9354, toll-free (800) 554-3402, (804) 662-9333/TTY ☎, e-mail jlhoneycutt@vdh.state.va.us.

BOARD FOR ARCHITECTS, PROFESSIONAL ENGINEERS, LAND SURVEYORS, CERTIFIED INTERIOR DESIGNERS AND LANDSCAPE ARCHITECTS

August 14, 2003 - 9 a.m. -- Canceled
Department of Professional and Occupational Regulations, 3600 West Broad Street, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A meeting of the Certified Interior Designers Section has been canceled.

Contact: Mark N. Courtney, Executive Director, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514, FAX

(804) 367-2475, (804) 367-9753/TTY ☎, e-mail
APELSCIDLA@dpor.state.va.us.

September 10, 2003 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulations,
3600 West Broad Street, Richmond, Virginia. ♿ (Interpreter for
the deaf provided upon request)

A meeting to conduct board business. The meeting is open
to the public; however, a portion of the board's business
may be discussed in closed session. Persons desiring to
participate in the meeting and requiring special
accommodations or interpreter services should contact the
department at least 10 days prior to this meeting so that
suitable arrangements can be made. The department fully
complies with the Americans with Disabilities Act.

Contact: Mark N. Courtney, Executive Director, Board for
Architects, Professional Engineers, Land Surveyors, Certified
Interior Designers and Landscape Architects, 3600 W. Broad
St., Richmond, VA 23230, telephone (804) 367-8514, FAX
(804) 367-2475, (804) 367-9753/TTY ☎, e-mail
APELSCIDLA@dpor.state.va.us.

ART AND ARCHITECTURAL REVIEW BOARD

September 5, 2003 - 10 a.m. -- Open Meeting
October 3, 2003 - 10 a.m. -- Open Meeting
† November 7, 2003 - 10 a.m. -- Open Meeting
Science Museum of Virginia, 2500 West Broad Street,
Richmond, Virginia. (Interpreter for the deaf provided upon
request)

A monthly meeting to review projects submitted by state
agencies. AARB submittal forms and submittal instructions
can be downloaded by visiting the DGS forms center at
www.dgs.state.va.us. Request Submittal Form # DGS-30-
905 or Submittal Instructions form # DGS-30-906.

Contact: Richard L. Ford, AIA, Chairman, Art and
Architectural Review Board, 1011 E. Main Street, Room 221,
Richmond, VA 23219, telephone (804) 643-1977, FAX (804)
643-1981, (804) 786-6152/TTY ☎, e-mail rlfaia@aol.com.

VIRGINIA BOARD FOR ASBESTOS, LEAD, AND HOME INSPECTORS

August 27, 2003 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. ♿

A meeting to conduct board business.

Contact: David Dick, Assistant Director, Virginia Board for
Asbestos, Lead, and Home Inspectors, 3600 W. Broad St.,
Richmond, VA 23230, telephone (804) 367-8507, FAX (804)
367-6128, (804) 367-9753/TTY ☎, e-mail
asbestos@dpor.state.va.us.

COMPREHENSIVE SERVICES FOR AT-RISK YOUTH AND FAMILIES

State Executive Council

August 27, 2003 - 9 a.m. -- Canceled
September 24, 2003 - 9 a.m. -- Open Meeting
† October 29, 2003 - 9 a.m. -- Open Meeting
Department of Social Services, 730 East Broad Street, Lower
Level Room 3, Richmond, Virginia. ♿

A monthly council meeting. For traveling directions, please
call (804) 692-1100.

Contact: Alan G. Saunders, Director, Office of
Comprehensive Services, 1604 Santa Rosa Rd., Richmond,
VA 23229, telephone (804) 662-9815, FAX (804) 662-9831, e-
mail ags992@central.dss.state.va.us.

BOARD OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY

† August 14, 2003 - 9:30 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street,
5th Floor, Richmond, Virginia. ♿ (Interpreter for the deaf
provided upon request)

A quarterly business meeting to include regulatory and
disciplinary matters as may be presented on the agenda.
Public comment will be received at the beginning of the
meeting.

Contact: Elizabeth Young, Executive Director, Board of
Audiology and Speech-Language Pathology, Alcoa Building,
6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712,
telephone (804) 662-9111, FAX (804) 662-9523, (804) 662-
7197/TTY ☎, e-mail elizabeth.young@dhp.state.va.us.

August 14, 2003 - Noon -- Open Meeting
Department of Health Professions, 6603 West Broad Street,
5th Floor, Richmond, Virginia. ♿

A meeting to hear possible violations of the laws and
regulations governing the practice of audiology and speech-
language pathology.

Contact: Elizabeth Young, Executive Director, Board of
Audiology and Speech-Language Pathology, 6603 West
Broad Street, 5th Floor, Richmond, VA 23230-1712, telephone
(804) 662-9907, FAX (804) 662-9523, (804) 662-7197/TTY ☎,
e-mail elizabeth.young@dhp.state.va.us.

VIRGINIA AVIATION BOARD

August 20, 2003 - 1 p.m. -- Open Meeting
Richmond Omni, 100 South 12th Street, Richmond, Virginia.
♿

The 2003 Virginia Aviation Conference will be held August
20 through 22, 2003. Applications for state funding will be
presented to the board and other matters of interest will be
presented to the Virginia aviation community. Individuals
with disabilities should contact Carolyn Toth 10 days prior to
the meeting if assistance is needed.

Calendar of Events

Contact: Carolyn Toth, Administrative Assistant, Virginia Aviation Board, 5702 Gulfstream Rd., Richmond, Va. 23250, telephone (804) 236-3637, FAX (804) 236-3635, toll-free (800) 292-1034, (804) 236-3624/TTY ☎, e-mail toth@doav.state.va.us.

BOARD FOR BARBERS AND COSMETOLOGY

† **September 15, 2003 - 8:30 a.m.** -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ♿

A general business meeting including consideration of regulatory issues as may be presented on the agenda. Public comment will be heard at the beginning of the meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: William H. Ferguson, II, Executive Director, Board for Barbers and Cosmetology, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590, FAX (804) 367-6295, (804) 367-9753/TTY ☎, e-mail barbercosmo@dpor.state.va.us.

DEPARTMENT FOR THE BLIND AND VISION IMPAIRED

September 10, 2003 - 10:30 a.m. -- Open Meeting
Library and Resource Center, 395 Azalea Avenue, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A joint board meeting of the Virginia Industries for the Blind in Richmond and Charlottesville.

Contact: Rick Bohrer, Industry Manager, Department for the Blind and Vision Impaired, 1535 High St., Richmond, VA 23220, telephone (804) 786-2056, FAX (804) 786-4582, toll-free (800) 622-2155, e-mail bohrerrc@dbvi.state.va.us.

† **October 14, 2003 - 1 p.m.** -- Open Meeting
Department for the Blind and Vision Impaired, 397 Azalea Avenue, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

The board will review information regarding activities and operations of the department, review expenditures from board endowment fund, and discuss other issues raised for the board members.

Contact: Katherine C. Proffitt, Administrative Staff Assistant, Department for the Blind and Vision Impaired, 397 Azalea Ave., Richmond, VA 23227, telephone (804) 371-3145, FAX (804) 371-3157, toll-free (800) 622-2155, (804) 371-3140/TTY ☎, e-mail proffikc@dbvi.state.va.us.

Statewide Rehabilitation Council for the Blind

† **September 13, 2003 - 10 a.m.** -- Open Meeting
Administrative Headquarters, 397 Azalea Avenue, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A quarterly meeting to advise the department on matters related to vocational rehabilitation services for the blind and visually impaired citizens of the Commonwealth.

Contact: James G. Taylor, VR Program Director, Department for the Blind and Vision Impaired, 397 Azalea Ave., Richmond, VA 23227, telephone (804) 371-3111, FAX (804) 371-3390, toll-free (800) 622-2155, (804) 371-3140/TTY ☎, e-mail taylorjg@dbvi.state.va.us.

CEMETERY BOARD

August 12, 2003 - 9 a.m. -- Open Meeting
August 21, 2003 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Room 453, Richmond, Virginia. ♿

A meeting to conduct an informal fact-finding conference.

Contact: Karen W. O'Neal, Regulatory Programs Coordinator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8537, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail oneal@dpor.state.va.us.

August 13, 2003 - 9 a.m. -- Open Meeting
† **November 5, 2003 - 9 a.m.** -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

A meeting to conduct board business.

Contact: Karen W. O'Neal, Regulatory Programs Coordinator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8537, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail oneal@dpor.state.va.us.

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

August 12, 2003 - 10 a.m. -- Open Meeting
James Monroe Building, 101 North 14th Street, 17th Floor, Conference Room, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

The committee will conduct general business, including review of local Chesapeake Bay Preservation Area programs for the Northern Area.

Contact: Carolyn J. Elliott, Administrative Assistant, Chesapeake Bay Local Assistance Board, James Monroe Bldg., 101 N. 14th St., 17th Floor, Richmond, VA 23219, telephone (804) 371-7505, FAX (804) 225-3447, toll-free (800) 243-7229, (800) 243-7229/TTY ☎, e-mail celliott@cblad.state.va.us.

August 12, 2003 - 2 p.m. -- Open Meeting
James Monroe Building, 101 North 14th Street, 17th Floor, Conference Room, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

The committee will conduct general business, including review of local Chesapeake Bay Preservation Area programs for the Southern Area.

Contact: Carolyn J. Elliott, Administrative Assistant, Chesapeake Bay Local Assistance Board, James Monroe Bldg., 101 N. 14th St., 17th Floor, Richmond, VA 23219, telephone (804) 371-7505, FAX (804) 225-3447, toll-free (800) 243-7229, (800) 243-7229/TTY ☎, e-mail celliott@cblad.state.va.us.

† **August 26, 2003 - 10 a.m.** -- Open Meeting
Chesapeake Bay Local Assistance Department, James Monroe Building, 101 North 14th Street, 17th Floor, Conference Room, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A meeting of the Policy Committee to consider final drafts of new agency guidance pertaining to (i) definitions of the terms "water body with perennial flow" and "contiguous" (as the latter term applies to nontidal wetlands to be included in locally designated Resource Protection Areas); (ii) protocols for determining the presence of perennial flow through site-specific investigations; and (iii) mapping of local Chesapeake Bay Preservation Areas; and a "Riparian Buffers Guidance Manual." The Committee will consider recommending these guidance documents for approval by the full Board at their September 15, 2003, quarterly meeting. Public comment will be taken.

Contact: Carolyn J. Elliott, Administrative Assistant, Chesapeake Bay Local Assistance Board, James Monroe Bldg., 101 N. 14th St., 17th Floor, Richmond, VA 23219, telephone (804) 371-7505, FAX (804) 225-3447, toll-free (800) 243-7229, (800) 243-7229/TTY ☎, e-mail celliott@cblad.state.va.us.

STATE CHILD FATALITY REVIEW TEAM

September 12, 2003 - 10 a.m. -- Open Meeting
Office of the Chief Medical Examiner, 400 East Jackson Street, Richmond, Virginia. ♿

The business portion of the State Child Fatality Review Team meeting, from 10 a.m. to 10:30 a.m., is open to the public. At the conclusion of the open meeting, the team will go into closed session for confidential case review.

Contact: Virginia Powell, Coordinator, State Child Fatality Review Team, 400 East Jackson St., Richmond, VA 23219, telephone (804) 786-6047, FAX (804) 371-8595, toll-free (800) 447-1708, e-mail vpowell@vdh.state.va.us.

COMPENSATION BOARD

August 20, 2003 - 11 a.m. -- Open Meeting
† **September 17, 2003 - 11 a.m.** -- Open Meeting
Compensation Board, 202 North 9th Street, 10th Floor, Richmond, Virginia. ♿

A monthly board meeting.

Contact: Cindy P. Waddell, Administrative Staff Assistant, Compensation Board, P.O. Box 710, Richmond, VA 23218, telephone (804) 786-0786, FAX (804) 371-0235, e-mail cwaddell@scb.state.va.us.

DEPARTMENT OF CONSERVATION AND RECREATION

August 12, 2003 - 6:30 p.m. -- Open Meeting
Fairy Stone State Park, Fayerdale Hall, 927 Fairystone Lake Drive, Stuart, Virginia. ♿

The committee will receive input from the public regarding the proposed Fairy Stone State Park master plan.

Contact: Robert Munson, Environmental Program Planner, Department of Conservation and Recreation, 203 Governor St., Suite 326, Richmond, VA 23219, telephone (804) 786-6140, FAX (804) 371-7899, e-mail rmunson@dcr.state.va.us.

August 13, 2003 - 6:30 p.m. -- Open Meeting
Wytheville Community College, Grayson Hall Commons, 1000 East Main Street, Wytheville, Virginia. ♿

The New River Trail State Park Master Plan Committee will receive comments from the public.

Contact: Robert Munson, Environmental Program Planner, Department of Conservation and Recreation, 203 Governor St., Suite 326, Richmond, VA 23219, telephone (804) 786-6140, FAX (804) 371-7899, e-mail rmunson@dcr.state.va.us.

Virginia Cave Board

September 13, 2003 - 1 p.m. -- Open Meeting
Radford, Virginia. ♿

Committee meetings will begin at 11 a.m. The board meeting will begin at 1 p.m.

Contact: Larry Smith, Natural Area Protection Manager, Department of Conservation and Recreation, 203 Governor St., Suite 302, Richmond, VA 23219, telephone (804) 371-6205, FAX (804) 371-2674, e-mail lsmith@dcr.state.va.us.

Virginia Land Conservation Foundation


August 12, 2003 - 9 a.m. -- Open Meeting
Dorey Recreational Park 2999 Darbytown Road, Richmond, Virginia. ♿

A regular business meeting.


Contact: Leon E. App, Acting Deputy Director, Department of Conservation and Recreation, 203 Governor St., Suite 302, Richmond, VA 23219, telephone (804) 786-6124, FAX (804) 786-6141, e-mail leonapp@dcr.state.va.us.


Calendar of Events

BOARD FOR CONTRACTORS

August 12, 2003 - 9 a.m. -- Open Meeting
August 26, 2003 - 9 a.m. -- Open Meeting
September 9, 2003 - 9 a.m. -- Open Meeting
September 30, 2003 - 9 a.m. -- Open Meeting
October 14, 2003 - 9 a.m. -- Open Meeting
October 21, 2003 - 9 a.m. -- Open Meeting
† October 29, 2003 - 1:30 p.m. -- Open Meeting
† November 4, 2003 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia.  (Interpreter for the deaf provided upon request)


Informal fact-finding conferences. Persons desiring to participate in the meeting and requiring special accommodations or interpretive services should contact the department at 804-367-0946 at least 10 days prior to the meeting so that suitable arrangements can be made for appropriate accommodations. The department fully complies with the Americans with Disabilities Act.

Contact: Sharon Martin, Legal Assistant, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8582, FAX (804) 367-0194, (804) 367-9753/TTY , e-mail martin@dpor.state.va.us.

August 20, 2003 - 9 a.m. -- Open Meeting
October 8, 2003 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. 


A regular meeting to address policy and procedural issues, review and render decisions on applications for contractors' licenses, and review and render case decisions on matured complaints against licensees. The meeting is open to the public; however, a portion of the board's business may be conducted in closed session.


Contact: Eric L. Olson, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2785, FAX (804) 367-2474, (804) 367-9753/TTY , e-mail contractors@dpor.state.va.us.

September 16, 2003 - 9 a.m. -- Open Meeting
October 28, 2003 - 9 a.m. -- Open Meeting
† October 29, 2003 - 1:30 p.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia.  (Interpreter for the deaf provided upon request)


Informal fact-finding conferences for the Contractor Recovery Fund. Persons desiring to participate in the meeting and requiring special accommodations or interpretive services should contact the department at 804-367-0946 at least 10 days prior to this meeting so that suitable arrangements can be made for appropriate accommodations. The department fully complies with the Americans with Disabilities Act.

Contact: Sharon Martin, Legal Assistant, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8562, FAX (804)


367-0194, (804) 367-9753/TTY , e-mail martin@dpor.state.va.us.

† October 29, 2003 - 10 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. 

A regular meeting of the Tradesman/Education Committee to consider items of interest relating to the tradesmen, backflow workers, education and other appropriate matters relating to tradesmen and the Board for Contractors.


Contact: Eric L. Olson, Assistant Director, Board for Contractors, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2785, FAX (804) 367-2474, (804) 367-9753/TTY , e-mail contractors@dpor.state.va.us.

BOARD OF CORRECTIONS

† September 16, 2003 - 10 a.m. -- Open Meeting
Department of Corrections, 6900 Atmore Drive, Board Room,
Richmond, Virginia. 


A meeting of the Liaison Committee to discuss correctional matters that may be presented to the board.

Contact: Barbara Woodhouse, Administrative Staff Assistant, Board of Corrections, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3124, FAX (804) 674-3509, e-mail woodhousebl@vadoc.state.va.us.

† September 16, 2003 - 1 p.m. -- Open Meeting
Department of Corrections, 6900 Atmore Drive, Board Room,
Richmond, Virginia. 


A meeting of the Correctional Services/Policy and Regulations Committee to discuss correctional matters to be presented to the board.

Contact: Barbara Woodhouse, Administrative Staff Assistant, Board of Corrections, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3124, FAX (804) 674-3509, e-mail woodhousebl@vadoc.state.va.us.

† September 17, 2003 - 9:30 a.m. -- Open Meeting
Department of Corrections, 6900 Atmore Drive, Room 3065,
Richmond, Virginia. 

A meeting of the Administration Committee to discuss correctional matters to be presented to the board.


Contact: Barbara Woodhouse, Administrative Staff Assistant, Board of Corrections, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3124, FAX (804) 674-3509, e-mail woodhousebl@vadoc.state.va.us.

† September 17, 2003 - 10 a.m. -- Open Meeting
Department of Corrections, 6900 Atmore Drive, Board Room,
Richmond, Virginia. 

A meeting to discuss correctional matters presented to the board.

Contact: Barbara Woodhouse, Administrative Staff Assistant, Board of Corrections, 6900 Atmore Drive Richmond, VA 23225, telephone (804) 674-3124, FAX (804) 674-3509, e-mail woodhousebl@vadoc.state.va.us.

CRIMINAL JUSTICE SERVICES BOARD

† **September 18, 2003 - 11 a.m.** -- Open Meeting
General Assembly Building, 9th and Broad Streets, House
Room D, Richmond, Virginia. 


A general business meeting.

Contact: Melissa Feeley, Assistant to the Director, Criminal Justice Services Board, Eighth St. Office Bldg., 805 E. Broad St., 10th Floor, Richmond, VA 23219, telephone (804) 786-8718, FAX (804) 786-0588, e-mail mfeeley@dcjs.state.va.us.

BOARD OF COUNSELING


August 21, 2003 - 10 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street,
5th Floor, Richmond, Virginia. 

The Credentials Committee will meet to review and discuss applicant credentials and hold an informal conference pursuant to § 2.2-4019 of the Code of Virginia. The committee will meet in open and closed sessions.


Contact: Joyce D. Williams, Administrative Assistant, Board of Counseling, 6603 W. Broad St., 6th Floor, Richmond, VA 23230, telephone (804) 662-9912, FAX (804) 662-7250, (804) 662-7197/TTY , e-mail coun@dhp.state.va.us.

August 22, 2003 - 10 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street,
5th Floor, Richmond, Virginia. 


A business meeting to include reports from standing committees and any other disciplinary or regulatory matters as may be presented on the agenda. Public comment will be received at the beginning of the meeting

Contact: Evelyn B. Brown, Executive Director, Board of Counseling, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9912, FAX (804) 662-9943, (804) 662-7197/TTY , e-mail evelyn.brown@dhp.state.va.us.


BOARD OF DENTISTRY

August 15, 2003 - 9 a.m. -- Open Meeting
August 29, 2003 - 9:30 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street,
5th Floor, Room 1, Richmond, Virginia. 

Informal Hearings. There will not be a public comment period.

Contact: JeAnne Marshall, Administrative Assistant, Department of Health Professions, 6603 W. Broad St., 5th Fl, Richmond, Virginia 23230-1712, telephone (804) 662-9906, FAX (804) 662-7246, (804) 662-7197/TTY , e-mail JeAnne.Marshall@dhp.state.va.us.

DESIGN-BUILD/CONSTRUCTION MANAGEMENT REVIEW BOARD

August 21, 2003 - 11 a.m. -- Open Meeting
September 18, 2003 - 11 a.m. -- Open Meeting
October 16, 2003 - 11 a.m. -- Open Meeting
Department of General Services, 8th Street Office Building,
3rd Floor, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A meeting to review requests submitted by localities to use design-build or construction management type contracts. Contact the Division of Engineering and Buildings to confirm the meeting. Board rules and regulations can be obtained online at www.dgs.state.va.us under the DGS Forms, Form # DGS-30-904.

Contact: Freddie M. Adcock, Administrative Assistant, Department of General Services, 805 E. Broad St., Room 101, Richmond, VA 23219, telephone (804) 786-3263, FAX (804) 371-7934, (804) 786-6152/TTY , e-mail fadcock@dgs.state.va.us.


BOARD OF EDUCATION

September 17, 2003 - 9 a.m. -- Open Meeting
October 22, 2003 - 9 a.m. -- Open Meeting
James Monroe Building, 101 North 14th Street, Main Lobby,
Rooms D and E, Richmond, Virginia.

A regular business meeting of the board. Persons who wish to speak or who require the services of an interpreter for the deaf should contact the agency 72 hours in advance. Public comment will be received.

Contact: Dr. Margaret N. Roberts, Office of Policy and Public Affairs, Department of Education, P.O. Box 2120, James Monroe Bldg., 101 N. 14th St., 25th Floor, Richmond, VA 23219, telephone (804) 225-2540, FAX (804) 225-2524, e-mail mroberts@mail.vak12ed.edu.

DEPARTMENT OF ENVIRONMENTAL QUALITY

August 11, 2003 - 4:30 p.m. -- Open Meeting
Department of Environmental Quality, 629 East Main Street,
First Floor Conference Room, Richmond, Virginia. 

Pursuant to the federal Coastal Zone Management Act, a public meeting will be conducted as part of the National Oceanic and Atmospheric Administration's evaluation of the Virginia Coastal Resources Management Program. Virginia's coastal resources are managed by a network of state agencies coordinated by the Virginia Department of Environmental Quality. The purpose of this meeting is to receive public comments regarding the operation of the Virginia Coastal Resources Management Program from November 1999 to the present. For more information about the program and this federal evaluation, visit <http://www.deq.state.va.us/coastal/>. Written comments are also encouraged and will be accepted until August 25. Please direct written comments to Ralph Cantral, Chief, National Policy and Evaluation Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305

Calendar of Events

East West Highway, 10th Floor, Silver Spring, Maryland 20910.


Contact: Laura McKay, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4323, e-mail lbmckay@deq.state.va.us.

August 18, 2003 - 9 a.m. -- Open Meeting

September 11, 2003 - 9 a.m. -- Open Meeting

September 29, 2003 - 9 a.m. -- Open Meeting


October 15, 2003 - 9 a.m. -- Open Meeting

Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, Virginia. 

A meeting of the Water Policy Technical Advisory Committee (WP-TAC) working on a preliminary water resources plan and local and regional water supply regulations. Prior work of the WP-TAC resulted in SB 1221 (2003), which was passed by the General Assembly and signed by the Governor on March 24, 2003. This legislation will provide part of the structure for the work of the WP-TAC through the rest of the year. In addition, the work of the WP-TAC will be informed by work that was conducted during the fall of 2002.

Contact: Scott W. Kudlas, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4456, FAX (804) 698-4346, e-mail swkudlas@deq.state.va.us.


August 21, 2003 - 9 a.m. -- Open Meeting

Department of Environmental Quality, 629 East Main Street, Richmond, Virginia. 

A meeting of the Natural Resources Funding Commission. The commission was established in response to recommendations for the Governor's Natural Resources Summit.

Contact: Scott Reed, Department of Environmental Quality, Office of the Secretary of Natural Resources, Ninth Street Office Building, 7th Floor, Richmond, VA 23219, telephone (804) 786-0044, e-mail fsreed@gov.state.va.us.


† **August 26, 2003 - 7 p.m.** -- Open Meeting

Page County Circuit Court Room, 116 South Court Street, Luray, Virginia. 

The first public meeting on the development of a bacteria TMDL for a 19.3-mile segment of Hawksbill Creek in Page County. The General Notice is published in this issue of the Virginia Register. The comment period will close on September 25, 2003.

Contact: Robert Brent, Department of Environmental Quality, P.O. Box 3000, Harrisonburg, VA 22801, telephone (540) 754-7848, FAX (540) 574-7878, e-mail rbrent@deq.state.va.us.

† **August 27, 2003 - 9 a.m.** -- Public Hearing

Department of Environmental Quality, 629 East Main Street, Richmond, Virginia. 

A public hearing on a proposed Commonwealth of Virginia § 111(d)/129 Plan for commercial/industrial solid waste incinerators. The hearing will be held to accept testimony concerning the proposed revision. The proposed revision consists of (i) emission limitations and other regulatory

requirements; (ii) an inventory of emissions from affected facilities; and (iii) other supporting documentation. The department is seeking comment on the overall plan, and on the issue of whether any regulations included in the plan should be submitted to U.S. Environmental Protection Agency (EPA) as part of the plan.

Contact: Karen G. Sabasteanski, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4426, FAX (804) 698-4510, e-mail kgsabastea@deq.state.va.us.


† **August 27, 2003 - 7 p.m.** -- Open Meeting

Arthur L. Hildreth, Jr. Municipal Building, 9418 John Sevier Road, New Market, Virginia. 

The first public meeting on the development of bacteria and general standard TMDLs for a 31.18-mile segment of Smith Creek in Rockingham and Shenandoah Counties. The General Notice is published in this issue of the Virginia Register. The public comment period will close on September 26, 2003.

Contact: Robert Brent, Department of Environmental Quality, P.O. Box 3000, Harrisonburg, VA 22801, telephone (540) 754-7848, FAX (540) 574-7878, e-mail rbrent@deq.state.va.us.

September 5, 2003 - 10 a.m. -- Open Meeting


Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, Virginia. 

The first meeting of the Natural Resources Partnership established to further the efforts of the Governor's Natural Resources Leadership Summit.

Contact: Scott Reed, Department of Environmental Quality, Office of the Secretary of Natural Resources, Ninth Street Office Bldg., 7th Floor, Richmond, VA 23219, telephone (804) 786-0044, e-mail fsreed@gov.state.va.us.

Ground Water Protection Steering Committee

† **September 16, 2003 - 9 a.m.** -- Open Meeting


Department of Environmental Quality, 629 East Main Street, Richmond, Virginia. 

A regular meeting.

Contact: Mary Ann Massie, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4042, e-mail mamassie@deq.state.va.us.

Litter Control and Recycling Fund Advisory Board


August 13, 2003 - 10:30 a.m. -- Open Meeting

Department of Environmental Quality, 629 East Main Street, Richmond, Virginia. 

A regular meeting.

Contact: G. Steven Coe, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4029, FAX (804) 698-4424, e-mail gscoe@deq.state.va.us.


Recycling Markets Development Council

August 20, 2003 - 10 a.m. -- Open Meeting
Henrico Training Center, 7701 East Parham Road, Richmond, Virginia. 

A regular meeting.


Contact: G. Steven Coe, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4029, FAX (804) 698-4224, e-mail gscoe@deq.state.va.us.

VIRGINIA FIRE SERVICES BOARD

† **August 15, 2003 - 9 a.m.** -- Open Meeting
Clarion Hotel, Roanoke Airport, Roanoke, Virginia. 
(Interpreter for the deaf provided upon request)

Fire Education and Training Committee (FEandT) at 9 a.m.
Administration and Policy (AandP) 10 minutes after the conclusion of FEandT; Fire Prevention and Control (FPandC) 10 minutes after the conclusion of AandP; Finance 10 minutes after the conclusion of FPandC.


Contact: Jennifer Cole, VFSB Clerk, Virginia Fire Services Board, 101 North 14th St., 18th Floor, Richmond, VA 23219, telephone (804) 371-0220, FAX (804) 371-0219, e-mail jcole@vdfp.state.va.us.

† **August 16, 2003 - 9 a.m.** -- Open Meeting
Clarion Hotel, Roanoke Airport, Roanoke, Virginia. 
(Interpreter for the deaf provided upon request)


Please contact Jennifer Cole for more details.

Contact: Jennifer Cole, VFSB Clerk, Virginia Fire Services Board, 101 North 14th St., 18th Floor, Richmond, VA 23219, telephone (804) 371-0220, FAX (804) 371-0219, e-mail jcole@vdfp.state.va.us.

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

September 9, 2003 - 1 p.m. -- Open Meeting
September 10, 2003 - 9 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia. 

A meeting to hear possible violations of the laws and regulations governing the practice of funeral service.

Contact: Elizabeth Young, Executive Director, Board of Funeral Directors and Embalmers, 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9907, FAX (804) 662-9523, (804) 662-7197/TTY , e-mail elizabeth.young@dhp.state.va.us.

BOARD OF GAME AND INLAND FISHERIES


August 21, 2003 - 9 a.m. -- Public Hearing
Department of Game and Inland Fisheries, 4000 West Broad Street, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A meeting to adopt 2003-2004 hunting seasons and bag limits for migratory waterfowl (ducks and coots, geese and brant, swan, gallinules and moorhens) and falconry, based on frameworks provided by the U.S. Fish and Wildlife Service. The board will solicit and receive comments from the public during the public hearing portion of the meeting for this action, at which time any interested citizen present shall be heard. The board may also review possible proposals for legislation for the 2004 session of the General Assembly, discuss general and administrative issues, and hold a closed session at some time during the meeting. The board may elect to hold a dinner Wednesday evening, August 20, or after the meeting on Thursday, August 21, at a location and time to be determined.


Contact: Phil Smith, Policy Analyst, Department of Game and Inland Fisheries, 4016 W. Broad St., Richmond VA 23230, telephone (804) 367-1000, e-mail regcomments@dgif.state.va.us.

GEORGE MASON UNIVERSITY


August 20, 2003 - 9 a.m. -- Open Meeting
Airlie Conference Center, East Room, Warrenton, Virginia.

September 24, 2003 - 9 a.m. -- Open Meeting
George Mason University, Mason Hall, Fairfax, Virginia. 

A meeting of the Board of Visitors. The agenda will be published 10 days prior to the meeting.

Contact: Mary Roper, Secretary, pro tem, George Mason University, MSN 3A1, George Mason University, 4400 University Dr., Fairfax, VA 22030, telephone (703) 993-8703, (703) 993-8707/TTY , e-mail mroper@gmu.edu.


OFFICE OF THE GOVERNOR

August 15, 2003 - 10 a.m. -- Open Meeting
Richmond, Virginia area.
September 9, 2003 - 10 a.m. -- Open Meeting
Hampton History Museum, 120 Old Hampton Lane, Hampton, Virginia.
September 23, 2003 - 10 a.m. -- Open Meeting
Northern Virginia area. 

A meeting of the Urban Policy Task Force.

Contact: Kelly Spraker, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1902.

STATE BOARD OF HEALTH


October 24, 2003 - 9 a.m. -- Open Meeting
Department of Health, Main Street Station, 1500 East Main St., 3rd Floor Conference Room, Richmond, Virginia. 

A general business meeting.

Contact: Rene Cabral-Daniels, Department of Health, 1500 E. Main St., Richmond, VA 23219, telephone (804) 786-3561.

Calendar of Events

DEPARTMENT OF HEALTH

August 13, 2003 - 10 a.m. -- Open Meeting
Department of Health, Main Street Station, 1500 East Main Street, Room 115, Richmond, Virginia. 

A meeting of the Marina Regulations Advisory Committee for the Sanitary Regulations for Marinas and Boat Moorings (12 VAC 5-570) to discuss both the current status of the regulatory program and future amendments to the current regulations as part of a comprehensive review of the regulations.

Contact: Preston Smith, Marina Program Acting Director, Department of Health, 1500 E. Main St., Room 115, Richmond, VA 23219, telephone (804) 371-2889, FAX (804) 225-4003, e-mail psmith@vdh.state.va.us.


Sewage Handling and Disposal Advisory Committee

August 21, 2003 - 10 a.m. -- Open Meeting
Department of Health, 1500 East Main Street, Room 115, Richmond, Virginia.

A meeting to discuss regulations, new technologies and new products to recommend for approval to the State Health Commissioner for use in Virginia.

Contact: Donald J. Alexander, Division Director, Department of Health, 1500 E. Main St., Room 115, Richmond, VA 23219, telephone (804) 225-4030, FAX (804) 225-4003, e-mail dalexander@vdh.state.va.us.


DEPARTMENT OF HEALTH PROFESSIONS

August 15, 2003 - 9 a.m. -- Open Meeting
October 17, 2003 - 9 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia. 


A bimonthly meeting of the Intervention Program Committee for the Health Practitioners' Intervention Program.

Contact: Donna P. Whitney, Intervention Program Manager, Department of Health Professions, 6603 W. Broad St., 5th Floor, Richmond, VA 23230, telephone (804) 662-9424, FAX (804) 662-7358, e-mail donna.whitney@dhp.state.va.us.

BOARD FOR HEARING AID SPECIALISTS


† August 11, 2003 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. 

A general board business meeting.

Contact: William H. Ferguson, II, Executive Director, Board for Hearing Aid Specialists, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8590, FAX (804) 367-6295, (804) 367-9753/TTY , e-mail hearingaidspec@dpor.state.va.us.

VIRGINIA INFORMATION TECHNOLOGIES AGENCY


VGIN Advisory Board

September 4, 2003 - 1:30 p.m. -- Open Meeting
† November 6, 2003 - 1:30 p.m. -- Open Meeting
Richmond Plaza Building, 110 South 7th Street, 3rd Floor Training Room, Richmond, Virginia. 

A regular board meeting.


Contact: Bill Shinar, VGIN Coordinator, Virginia Information Technologies Agency, 110 S. 7th Street, Suite 135, Richmond, VA 23219, telephone (804) 786-8175, FAX (804) 371-2795, e-mail bshinar@vgin.state.va.us.

Wireless E-911 Services Board

September 10, 2003 - 9 a.m. -- Open Meeting
Richmond Plaza Building, 110 South 7th Street, 3rd Floor Conference Room, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A meeting of the CMRS subcommittee in closed session.


Contact: Steven Marzolf, Public Safety Communications Coordinator, Virginia Information Technologies Agency, 110 South 7th Street, Richmond, VA 23219, telephone (804) 371-0015, e-mail smarzolf@ntp.state.va.us.

September 10, 2003 - 10 a.m. -- Open Meeting
Richmond Plaza Building, 110 South 7th Street, 3rd Floor Conference Room, Richmond, Virginia.  (Interpreter for the deaf provided upon request)


A regular monthly meeting of the full board.

Contact: Steven Marzolf, Public Safety Communications Coordinator, Virginia Information Technologies Agency, 110 South 7th Street, Richmond, VA 23219, telephone (804) 371-0015, e-mail smarzolf@ntp.state.va.us.

JAMESTOWN-YORKTOWN FOUNDATION


September 10, 2003 - Noon -- Open Meeting
† November 5, 2003 - 2 p.m. -- Open Meeting
Location to be determined.  (Interpreter for the deaf provided upon request)

A meeting of the Jamestown 2007 Steering Committee's Executive Committee. Public comment will not be heard.


Contact: Stacey Ruckman, Jamestown 2007 Executive Assistant, Jamestown-Yorktown Foundation, P.O. Box 1607, Williamsburg, VA 23187, telephone (757) 253-4659, FAX (757) 253-5299, toll-free (888) 593-4682, (757) 253-7236/TTY , e-mail sruckman@jyf.state.va.us.

DEPARTMENT OF LABOR AND INDUSTRY


Virginia Apprenticeship Council Subcommittee

August 21, 2003 - 9:30 a.m. -- Open Meeting
Department of Labor and Industry, Powers-Taylor Building, 13 South 13th Street, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A general meeting.

Contact: Beverley Donati, Assistant Program Director, Department of Labor and Industry, Powers-Taylor Bldg., 13 S. 13th St., Richmond, VA 23219, telephone (804) 786-2382, FAX (804) 786-8418, (804) 786-2376/TTY , e-mail bgd@doli.state.va.us.


Virginia Migrant and Seasonal Farmworkers Board

† **October 29, 2003 - 10 a.m.** -- Open Meeting
State Capitol, House Room 1, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A regular quarterly meeting.

Contact: Betty B. Jenkins, Board Administrator, Department of Labor and Industry, Powers-Taylor Building, 13 S. 13th Street, Richmond, VA 23219, telephone (804) 786-2391, FAX (804) 371-6524, (804) 786-2376/TTY , e-mail bbj@doli.state.va.us.


Safety and Health Codes Board

August 12, 2003 - 10 a.m. -- Public Hearing
Tyler Building, 1300 East Main Street, Courtroom B, Richmond, Virginia.  (Interpreter for the deaf provided upon request)


September 12, 2003 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Safety and Health Codes Board intends to adopt regulations entitled **16 VAC 25-145, Safety Standards for Fall Protection in Steel Erection, Construction Industry**. The purpose of the proposed action is to establish in regulation the current VOSH administrative policy regarding fall protection for steel erection workers from falls at or above 10 feet.


Statutory Authority: § 40.1-22 of the Code of Virginia.

Contact: Regina P. Cobb, Agency Management Analyst Senior, Department of Labor and Industry, Powers-Taylor Bldg., 13 S. 13th St., Richmond, VA 23219, telephone (804) 786-0610, FAX (804) 786-8418, (804) 786-2376/TTY , e-mail rlc@doli.state.va.us.


VIRGINIA MANUFACTURED HOUSING BOARD

† **August 21, 2003 - 10 a.m.** -- Open Meeting
Jackson Center, 501 North Second Street, Richmond, Virginia.  (Interpreter for the deaf provided upon request)


A regular meeting to address complaints against manufactured housing licensees, handle claims to the Transaction Recovery Fund, and carry out other routine administrative matters under the Manufactured Housing Licensing and Transaction Recovery Fund Regulations.

Contact: Curtis L. McIver, State Building Code Administrator, Virginia Manufactured Housing Board, 501 N. 2nd St., Richmond, VA 23219, telephone (804) 371-7160, FAX (804) 371-7092, (804) 371-7089/TTY , e-mail cmciver@dhcd.state.va.us.


MARINE RESOURCES COMMISSION

August 26, 2003 - 9:30 a.m. -- Open Meeting
September 23, 2003 - 9:30 a.m. -- Open Meeting
October 28, 2003 - 9:30 a.m. -- Open Meeting
Marine Resources Commission, 2600 Washington Avenue, 4th Floor, Newport News, Virginia.  (Interpreter for the deaf provided upon request)

A monthly commission meeting.

Contact: Kathy Leonard, Executive Secretary, Marine Resources Commission, 2600 Washington Ave., 3rd Floor, Newport News, VA 23607, telephone (757) 247-2120, FAX (757) 247-8101, toll-free (800) 541-4646, (757) 247-2292/TTY , e-mail kleonard@mrc.state.va.us.

BOARD OF MEDICAL ASSISTANCE SERVICES

September 9, 2003 - 10 a.m. -- Open Meeting
Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, Virginia. 

A regular meeting.

Contact: Nancy Malczewski, Board Liaison, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-8096, FAX (804) 371-4981, (800) 343-0634/TTY , e-mail nmalczew@dmas.state.va.us.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

August 15, 2003 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Medical Assistance Services intends to amend regulations entitled: **12 VAC 30-50, Amount, Duration, and Scope of Medical and Remedial Services; 12 VAC 30-60, Standards Established and Methods Used to Assure High Quality of Care; and 12 VAC 30-130, Amount Duration, and Scope of Selected Services**. The purpose of the proposed action is to improve the delivery of community mental health and regulatory requirements.


Statutory Authority: §§ 32.1-324 and 32.1-325 of the Code of Virginia.

Calendar of Events


Public comments may be submitted until August 15, 2003, to Katherine Hancock, Analyst, Division of Policy, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

Contact: Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7959, FAX (804) 786-1680, or e-mail vsimmons@dmas.state.va.us.

Medicaid Physician Advisory Committee

† **October 14, 2003 - 4 p.m.** -- Open Meeting
Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, Virginia. 


The discussion of physician issues in the Medicaid system.

Contact: Chris Schroeder, Administrative Staff Specialist, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 371-0552, FAX (804) 371-4981, (800) 343-0634/TTY , e-mail cschroed@dmas.state.va.us.

BOARD OF MEDICINE

† **August 12, 2003 - 4 p.m.** -- Open Meeting
Williamsburg Marriott Hotel, 50 Kingsmill Road, Williamsburg, Virginia.

An orientation for newly appointed Board of Medicine members. The presentation will cover the structure and operation of the board, as well as board member responsibilities. No public comment will be received.

Contact: Peggy Sadler/Renee Dixon, Staff, Board of Medicine, 6603 W. Broad St., Richmond, VA, telephone (804) 662-7332, FAX (804) 662-9517, (804) 662-7197/TTY , e-mail peggy.sadler@dhp.state.va.us.

Informal Conference Committee

August 28, 2003 - 9 a.m. -- Open Meeting
Holiday Inn Select, 2801 Plank Road, Fredericksburg, Virginia.

September 3, 2003 - 9 a.m. -- Open Meeting
August 20, 2003 - 9:15 a.m. -- Open Meeting
Clarion Hotel, 3315 Ordway Drive, Roanoke, Virginia.

† **August 13, 2003 - 8:45 a.m.** -- Open Meeting
September 17, 2003 - 9 a.m. -- Open Meeting
Williamsburg Marriott, 50 Kingsmill Road, Williamsburg, Virginia.

A meeting to inquire into allegations that certain practitioners may have violated laws and regulations governing the practice of medicine and other healing arts in Virginia. The committee will meet in open and closed sessions pursuant to the Code of Virginia. Public comment will not be received.

Contact: Peggy Sadler or Renee Dixon, Staff, Department of Health Professions, 6603 W. Broad St., Richmond, VA 23230,

telephone (804) 662-7332, FAX (804) 662-9517, (804) 662-7197/TTY , e-mail Peggy.Sadler@dhp.state.va.us.

STATE MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES BOARD


August 15, 2003 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Mental Health, Mental Retardation and Substance Abuse Services Board intends to amend regulations entitled **12 VAC 35-180, Regulations to Assure the Protection of Participants in Human Research**. The purpose of the proposed action is to comply with changes to the Code of Virginia and to be consistent with applicable federal requirements, including privacy requirements pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA).


Statutory Authority: §§ 37.1-10 and 37.1-24.01 of the Code of Virginia.

Contact: Mary Nash Shawver, Planning Coordinator, Office of Substance Abuse Services, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23218, telephone (804) 786-0825, FAX (804) 786-4320, e-mail mshawver@dmhmrsas.state.va.us.

DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES

† **August 18, 2003 - 10 a.m.** -- Open Meeting
Department of Rehabilitative Services, 8004 Franklin Farms Drive, 1st Floor, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A meeting of the Steering Committee of the Olmstead Task Force.

Contact: Fran M. Sadler, Administrative Specialist, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23218, telephone (804) 786-8019, FAX (804) 786-9248, (804) 371-8977/TTY , e-mail fsadler@dmhmrsas.state.va.us.

August 20, 2003 - 10 a.m. -- Public Hearing
Jefferson Building, 1220 Bank Street, 9th Floor, Conference Room, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A public hearing to receive comments on the Virginia Community Mental Health Services Performance Partnership Block Grant Application for Federal Fiscal Year 2004. Copies of the application are available for review at the Office of Mental Health Services, 10th Floor, Jefferson Building, Richmond, Virginia, and at each community services board office. Comments may be made at the hearing or in writing no later than August 20, 2003, to the Office of the Commissioner, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23218. Any person wishing to make a presentation at the hearing should contact William

T. Ferriss, LCSW. Copies of oral presentations should be filed at the time of the hearing.

Contact: William T. Ferriss, LCSW, Office of Mental Health, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23218, telephone (804) 786-4837, FAX (804) 371-0091, (804) 371-8977/TTY ☎

† **August 28, 2003 - 10 a.m.** -- Open Meeting
Henrico Training Center, 7701 East Parham Road, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

The Olmstead Task Force will hold its final meeting.

Contact: Fran M. Sadler, Administrative Specialist, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23218, telephone (804) 786-8019, FAX (804) 786-9248, (804) 371-8977/TTY ☎, e-mail fsadler@dmhmrsas.state.va.us.

† **September 25, 2003 - 10 a.m.** -- Public Hearing
Jefferson Building, 1220 Bank Street, 8th Floor Conference Room, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A public hearing to receive comments on the Virginia Substance Abuse Prevention and Treatment Block Grant Application for Fiscal Year 2004. Copies of the application are available for review at the Office of Substance Abuse, Room 818, Jefferson Building, Richmond, Virginia, and at each community services board office. Comments may be made at the hearing or in writing by no later than September 26, 2003, to the Office of the Commissioner, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23218. Any person wishing to make a presentation at the hearing should contact Mellie Randall. Copies of oral presentations should be filed at the time of the hearing.

Contact: Mellie Randall, Office of Substance Abuse, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23218, telephone (804) 371-2135, FAX (804) 786-4320, (804) 371-8977/TTY ☎, e-mail mrandall@dmhmrsas.state.va.us.

STATE MILK COMMISSION

August 13, 2003 - 10:30 a.m. -- Open Meeting
Motley's Dairy Inc., 4740 Payneton Road, Chatham, Virginia.

A regular meeting of the commission to consider industry issues, distributor licensing, base transfers, and reports from staff. The commission offers anyone in attendance an opportunity to speak at the conclusion of the agenda. Those persons requiring special accommodations should notify the agency contact at least five working days prior to the meeting date so that suitable arrangements can be made.

Contact: Edward C. Wilson, Jr., Deputy Administrator, State Milk Commission, Ninth St. Office Bldg., 202 N. Ninth St., Room 915, Richmond, VA 23219, telephone (804) 786-2013, FAX (804) 786-3779, e-mail ewilson@smc.state.va.us.

DEPARTMENT OF MINES, MINERALS AND ENERGY

September 23, 2003 - 9:30 a.m. -- Public Hearing
Department of Mines, Minerals and Energy, Buchanan-Smith Building, Room 219, US Route 23 South, Big Stone Gap, Virginia. ♿ (Interpreter for the deaf provided upon request)

September 28, 2003 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Mines, Minerals and Energy intends to amend regulations entitled **4 VAC 25-10, Public Participation Guidelines**. The purpose of the proposed action is to accept comments on the amendments to the department's public participation guidelines.

Statutory Authority: §§ 45.1-161.3, 45.1-361.15, 45.1-161.28 and 45.1-161.292:19 of the Code of Virginia.

Contact: Stephen A. Walz, Regulatory Coordinator, Department of Mines, Minerals and Energy, 202 N. 9th St., 8th Floor, Richmond, VA 23219-3402, telephone (804) 692-3211, FAX (804) 692-3237 or e-mail saw@mme.state.va.us.

September 25, 2003 - 9:30 a.m. -- Public Hearing
Department of Forestry, Fontaine Research Park, 900 Natural Resources Drive, Charlottesville, Virginia. ♿ (Interpreter for the deaf provided upon request)

† **September 23, 2003 - 9:30 a.m.** -- Public Hearing
Department of Mines, Minerals and Energy, Buchanan-Smith Building, Room 219, US Route 23 South, Big Stone Gap, Virginia. ♿ (Interpreter for the deaf provided upon request)

October 11, 2003 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Coal Mining Examiners intends to amend regulations entitled **4 VAC 25-20, Board of Coal Mining Examiners Certification Requirements**. The purpose of the proposed action is to ensure that miners are certified and perform tasks required to mine coal safely and knowledgeably, to provide for the health and safety of persons and property on or near the mines, to provide a pool of qualified mining employees, and to encourage productive coal mines.

Statutory Authority: §§ 45.1-161.28, 45.1-161.29 and 45.1-161.34 of the Code of Virginia.

Contact: Frank Linkous, Mine Chief, Department of Mines, Minerals and Energy, P.O. Drawer 900, U.S. Route 23 South, Big Stone Gap, VA 24219, telephone (276) 523-8224, (276) 523-8239, FAX (804) 692-3237 or e-mail fal@mme.state.va.us.

Calendar of Events

September 28, 2003 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Coal Mining Examiners intends to amend regulations entitled **4 VAC 25-35, Certification Requirements for Mineral Miners**. The purpose of the proposed action is to accept comments on the amendments to the department's Certification Requirements for Mineral Miners, 4 VAC 25-35.

Statutory Authority: § 45.1-161.292:19 of the Code of Virginia.

Contact: Jeff Stewart, Safety Engineer, Sr., Department of Mines, Minerals and Energy, 202 N. 9th St., 8th Floor, Richmond, VA 23219-3402, telephone (434) 951-6315, FAX (434) 951-6325 or e-mail saw@mme.state.va.us.

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† **September 23, 2003 - 9:30 a.m.** -- Public Hearing
Department of Mines, Minerals and Energy, Buchanan-Smith Building, Room 219, US Route 23 South, Big Stone Gap, Virginia. (Interpreter for the deaf provided upon request)

October 11, 2003 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Mines, Minerals and Energy intends to adopt regulations entitled **4 VAC 25-125, Regulations Governing Coal Stockpiles and Bulk Storage and Handling Facilities**. The purpose of the proposed action is to meet industry and worker needs to improve worker safety on and around coal handling and storage facilities at coal mine sites. The Regulations Governing Coal Stockpiles and Bulk Storage and Handling Facilities provides worker protection through the implementation of safe working procedures and practices where there were previously none.

Statutory Authority: §§ 45.1-161.3, 45.1-161.106 and 45.1-161.254 of the Code of Virginia.

Contact: Frank Linkous, Mine Chief, Department of Mines, Minerals and Energy, P.O. Drawer 900, U.S. Route 23 South, Big Stone Gap, VA 24219, telephone (276) 523-8224, (276) 523-8239, FAX (804) 692-3237 or e-mail fal@mme.state.va.us.

Virginia Gas and Oil Board

† **August 19, 2003 - 9 a.m.** -- Open Meeting
Southwest Virginia Higher Education Center on the campus of the Virginia Highlands Community College, Abingdon, Virginia. (Interpreter for the deaf provided upon request)

A regularly scheduled meeting to consider petitions filed by applicants. The public may address the board on individual items as they are called for hearing. Information concerning the docket items can be viewed from 8 a.m. to 5 p.m. Monday through Friday at the office of the Department of Mines, Minerals and Energy, Division of Gas and Oil, 230 Charwood Drive, Abingdon, Virginia. All questions should be directed to the Division of Gas and Oil by telephoning

276-676-5423. Special accommodations for the disabled will be made available at the hearing on request. Anyone needing special accommodations for the August hearing should contact the Department of Mines, Minerals and Energy, Division of Gas and Oil at 276-676-5423 or call the Virginia Relay Center TTY 1-800-828-1120 by August 12, 2003.

Contact: Bob Wilson, Division Director, Department of Mines, Minerals and Energy, P.O. Box 1416, Abingdon, VA 24212, telephone (276) 676-5423, (800) 828-1120/TTY, e-mail bxw@mme.state.va.us.

DEPARTMENT OF MOTOR VEHICLES

† **August 28, 2003 - 10 a.m.** -- Open Meeting
Department of Motor Vehicles, 2300 West Broad Street, 7th Floor, Executive Conference Room, Richmond, Virginia

A meeting of the Legal Presence Panel.

Contact: Vivian R. Cheatham, Confidential Assistant, Department of Motor Vehicles, 2300 W. Broad St., Richmond, VA 23220, telephone (804) 367-6606, FAX (804) 367-2296, e-mail dmvrc@dmv.state.va.us.

† **September 10, 2003 - 8 a.m.** -- Open Meeting
Department of Motor Vehicles, 2300 West Broad Street, Richmond Virginia. (Interpreter for the deaf provided upon request)

A business meeting of the Medical Advisory Board.

Contact: J. C. Branche, R. N., Assistant Division Manager, Department of Motor Vehicles, 2300 W. Broad St., Richmond VA 23220, telephone (804) 497-7188, FAX (804) 367-1604, toll-free (866) 368-5463, (800) 272-9268/TTY, e-mail dmvj3b@dmv.state.va.us.

VIRGINIA MUSEUM OF FINE ARTS

NOTE: CHANGE IN MEETING DATE

† **September 9, 2003 - 8 a.m.** -- Open Meeting

October 7, 2003 - 8 a.m. -- Open Meeting

† **November 4, 2003 - 8 a.m.** -- Open Meeting

Virginia Museum of Fine Arts, 2800 Grove Avenue, Main Lobby, Conference Room, Richmond, Virginia.

A monthly meeting of the Executive Committee. Public comment will not be received.

Contact: Suzanne Broyles, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, VA 23221, telephone (804) 340-1503, FAX (804) 340-1502, (804) 340-1401/TTY, e-mail sbroyles@vmfa.state.va.us.

September 12, 2003 - 10 a.m. -- Open Meeting

September 17, 2003 - 12:30 p.m. -- Open Meeting

Virginia Museum of Fine Arts, CEO Parlor, 2800 Grove Avenue, Richmond, Virginia.

A meeting for staff to update the Museum Expansion Committee. Public comment will not be received.

Contact: Suzanne Broyles, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, VA 23221, telephone (804) 340-1503, FAX (804) 340-1502, (804) 340-1401/TTY ☎, e-mail sbroyles@vmfa.state.va.us.

September 17, 2003 - 8 a.m. -- Open Meeting
Virginia Museum of Fine Arts, 2800 Grove Avenue, CEO Building, 2nd Floor Conference Room, Richmond, Virginia. ♿

The following committees will meet:

Exhibitions - 9 a.m.
Planning - 10 a.m.
Expansion - 12:30 p.m.
Education and Programs - 2 p.m.
Communications and Marketing - 3:15 p.m.
Legislative - 4:15 p.m.

Public comment will not be received.

Contact: Suzanne Broyles, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, VA 23221, telephone (804) 340-1503, FAX (804) 340-1502, (804) 340-1401/TTY ☎, e-mail sbroyles@vmfa.state.va.us.

September 18, 2003 - 8 a.m. -- Open Meeting
Virginia Museum of Fine Arts, 2800 Grove Avenue, Richmond, Virginia. ♿

The following committees will meet:

Buildings and Grounds - 8:30 a.m. - CEO Building, 2nd Floor Conference Room
Collections - 9:30 a.m. - Auditorium
Finance - 11 a.m. - Main Lobby Conference Room
Board of Trustees - 12:30 p.m. - Auditorium

Public comment will not be received.

Contact: Suzanne Broyles, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, VA 23221, telephone (804) 340-1503, FAX (804) 340-1502, (804) 340-1401/TTY ☎, e-mail sbroyles@vmfa.state.va.us.

VIRGINIA MUSEUM OF NATURAL HISTORY

August 15, 2003 - 3 p.m. -- Open Meeting
Virginia Museum of Natural History, 1001 Douglas Avenue, Martinsville, Virginia. ♿

September 15, 2003 - 10 a.m. -- Open Meeting
October 20, 2003 - 10 a.m. -- Open Meeting
LeClair Ryan Consulting, 1010 First Union Building, 213 South Jefferson Avenue, Roanoke, Virginia. ♿

A meeting of the executive committee to discuss the management and direction of the museum.

Contact: Cindy Rorrer, Administrative Assistant, Virginia Museum of Natural History, 1001 Douglas Ave., Martinsville, VA 24112, telephone (276) 666-8616, FAX (276) 632-6487, (276) 666-8638/TTY ☎, e-mail crorrer@vmnh.net.

BOARD OF NURSING

August 11, 2003 - 9 a.m. -- Open Meeting
August 12, 2003 - 9 a.m. -- Open Meeting
August 14, 2003 - 9 a.m. -- Open Meeting
August 19, 2003 - 9 a.m. -- Open Meeting
August 26, 2003 - 9 a.m. -- Open Meeting
October 7, 2003 - 9 a.m. -- Open Meeting
October 8, 2003 - 9 a.m. -- Open Meeting
October 14, 2003 - 9 a.m. -- Open Meeting
October 15, 2003 - 9 a.m. -- Open Meeting
October 21, 2003 - 9 a.m. -- Open Meeting
October 23, 2003 - 9 a.m. -- Open Meeting
October 28, 2003 - 9 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Conference Room 3, Richmond, Virginia. ♿

A Special Conference Committee, comprised of two or three members of the Virginia Board of Nursing, will conduct informal conferences with licensees and certificate holders. Public comment will not be received.

Contact: Jay P. Douglas, R.N., M.S.M., C.S.A.C., Executive Director, Board of Nursing, 6603 West Broad Street, 5th Floor, Richmond, VA 23230, telephone (804) 662-9909, FAX (804) 662-9512, (804) 662-7197/TTY ☎, e-mail nursebd@dhp.state.va.us.

September 22, 2003 - 9 a.m. -- Open Meeting
September 24, 2003 - 9 a.m. -- Open Meeting
September 25, 2003 - 9 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia. ♿

A panel of the board will conduct formal hearings with licensees or certificate holders. Public comment will not be received.

Contact: Nancy K. Durrett, R.N., Executive Director, Board of Nursing, 6603 W. Broad St., 5th Floor, Richmond, VA 23230, telephone (804) 662-9909, FAX (804) 662-9512, (804) 662-7197/TTY ☎, e-mail nursebd@dhp.state.va.us.

September 23, 2003 - 9 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, Board Room 2, 5th Floor, Richmond, Virginia. ♿

A general business meeting including committee reports, consideration of regulatory action, and disciplinary case decisions as presented on the agenda. Public comment will be received at 11 a.m.

Contact: Jay P. Douglas, R.N., Executive Director, Board of Nursing, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9909, FAX (804) 662-9512, (804) 662-7197/TTY ☎, e-mail jay.douglas@dhp.state.va.us.

BOARD OF NURSING HOME ADMINISTRATORS

August 12, 2003 - 9 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Room 4, Richmond, Virginia. ♿

Calendar of Events

Informal hearings. There will not be a public comment period.

Contact: JeAnne Marshall, Administrative Assistant, Department of Health Professions, 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9906, FAX (804) 662-7246, (804) 662-7197/TTY ☎, e-mail JeAnne.Marshall@dhp.state.va.us.

BOARD FOR OPTICIANS

† **September 5, 2003 - 9:30 a.m.** -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. ♿

A general business meeting including consideration of regulatory issues as may be presented on the agenda. Public comment will be heard at the beginning of the meeting. Person desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at least 10 days prior to this meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: William H. Ferguson, II, Executive Director, Board for Opticians, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590, FAX (804) 367-6295, (804) 367-9753/TTY ☎, e-mail opticians@dpor.state.va.us.

BOARD OF OPTOMETRY

† **August 15, 2003 - 9 a.m.** -- Open Meeting
Department of Health Professions, 6603 West Broad Street,
5th Floor, Conference Room 4, Richmond, Virginia. ♿

Special conference hearings schedule: 9 a.m. through 2:30 p.m. This is a public meeting; however, public comment will not be received.

Contact: Elizabeth Carter, Ph.D., Executive Director, Board of Optometry, 6603 W. Broad St., 5th Floor, Richmond, VA 23230, telephone (804) 662-9910, FAX (804) 662-7098, e-mail elizabeth.carter@dhp.state.va.us.

PESTICIDE CONTROL BOARD

† **October 16, 2003 - 9 a.m.** -- Open Meeting
City Council Chambers, City Hall, 715 Princess Anne Street,
Fredericksburg, Virginia.

November 26, 2003 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Pesticide Control Board intends to amend regulations entitled **2 VAC 20-30, Rules and Regulations Governing the Pesticide Fees Charged by the Department of Agriculture and Consumer Services Under the Virginia Pesticide Control Act**. The purpose of the proposed action is to review the regulation for effectiveness and continued need. The proposed regulations set fees for (i) pesticide products offered for sale

in the Commonwealth; (ii) commercial pesticide applicators providing pest control services to citizens of the Commonwealth; (iii) registered technician applicators providing pest control services to citizens of the Commonwealth; and (iv) pesticide businesses operating in the Commonwealth. In addition to the fee structure, these regulations establish renewal deadlines and late fees.

Statutory Authority: § 3.1-249.30 of the Code of Virginia.

Contact: Marvin A. Lawson, Director, Pesticide Control Board, 1100 Bank St., Room 401, Richmond, VA 23219, telephone (8904) 786-3534, FAX (804) 786-5112, toll-free 1-800-552-9963, e-mail@vdacs.state.va.us.

BOARD OF PHARMACY

† **August 14, 2003 - 9 a.m.** -- Open Meeting
† **August 20, 2003 - 9 a.m.** -- Open Meeting
Department of Health Professions, 6603 West Broad Street,
5th Floor, Conference Room 1, Richmond, Virginia 23230 ♿

A Special Conference Committee to discuss disciplinary matters. Public comments will not be received.

Contact: Elizabeth Scott Russell, Executive Director, Board of Pharmacy, 6603 W. Broad St., 5th Floor, Richmond, VA 23230, telephone (804) 662-9911, FAX (804) 662-9313.

† **August 18, 2003 - 1 p.m.** -- Open Meeting
Department of Health Professions, 6603 West Broad Street,
5th Floor, Richmond, Virginia.

A committee of the board will review a request from the ACPE concerning pharmacy technicians.

Contact: Elizabeth Scott Russell, Executive Director, Board of Pharmacy, 6603 W. Broad St., 5th Floor, Richmond, VA 23230, telephone (804) 662-9911, FAX (804) 662-9313, e-mail pharmdb@dhp.state.va.us.

† **August 18, 2003 - 3 p.m.** -- Open Meeting
Department of Health Professions, 6603 West Broad Street,
5th Floor, Richmond, Virginia. ♿

A meeting of an Informal Conference Committee for approval of a pilot program application.

Contact: Elizabeth Scott Russell, Executive Director, Board of Pharmacy, 6603 W. Broad St., 5th Floor, Richmond, VA 23230, telephone (804) 662-9911, FAX (804) 662-9313, e-mail pharmdb@dhp.state.va.us.

POLYGRAPH EXAMINERS ADVISORY BOARD

September 18, 2003 - 10 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. ♿

A meeting to conduct board business. The department fully complies with the Americans with Disabilities Act.

Contact: Eric Olson, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2785, FAX (804)

367-2474, (804) 367-9753/TTY ☎, e-mail
olson@dpor.state.va.us.

BOARD FOR PROFESSIONAL AND OCCUPATIONAL REGULATION

August 19, 2003 - 10 a.m. -- Public Hearing
Roanoke City Council Chambers, Noel C. Taylor Municipal
Building, 4th Floor, 215 Church Avenue, SW, Roanoke,
Virginia ☎ (Interpreter for the deaf provided upon request)

August 28, 2003 - 10 a.m. -- Public Hearing
City of Chesapeake Council Chambers, 306 Cedar Road,
Chesapeake, Virginia. ☎ (Interpreter for the deaf provided
upon request)

September 22, 2003 - 10 a.m. -- Public Hearing
Department of Professional and Occupational Regulation,
3600 West Broad Street, 5th Floor, Conference Room,
Richmond, Virginia. ☎ (Interpreter for the deaf provided upon
request)

October 1, 2003 - 10 a.m. -- Public Hearing
Arlington County Board Chambers, 1 Court House Square,
2100 Clarendon Boulevard, Arlington, Virginia. ☎ (Interpreter
for the deaf provided upon request)

A public hearing to study the possible regulation of
photogrammetry.

Contact: Judith A. Spiller, Executive Secretary, Board for
Professional and Occupational Regulation, 3600 W. Broad St.,
Richmond VA 23230, telephone (804) 367-8519, FAX (804)
367-9537, (804) 367-9753/TTY ☎, e-mail
spiller@dpor.state.va.us.

August 19, 2003 - 1:30 p.m. -- Public Hearing
Roanoke City Council Chambers, Noel C. Taylor Municipal
Building, 215 Church Ave., S.W., 4th Floor, Roanoke,
Virginia. ☎ (Interpreter for the deaf provided upon request)

August 28, 2003 - 1:30 p.m. -- Public Hearing
City of Chesapeake Council Chambers, 306 Cedar Road,
Chesapeake, Virginia. ☎ (Interpreter for the deaf provided
upon request)

September 22, 2003 - 1:30 p.m. -- Public Hearing
Department of Professional and Occupational Regulation,
3600 West Broad Street, 5th Floor, Conference Room,
Richmond, Virginia. ☎ (Interpreter for the deaf provided upon
request)

October 1, 2003 - 1:30 p.m. -- Public Hearing
Arlington County Board Chambers, 1 Court House Square,
2100 Clarendon Boulevard, Arlington, Virginia. ☎ (Interpreter
for the deaf provided upon request)

A public hearing to study the possible regulation of
computer voice stress analyzers.

Contact: Judith A. Spiller, Executive Secretary, Board for
Professional and Occupational Regulation, 3600 W. Broad St.,
Richmond, VA 23230, telephone (804) 367-8519, FAX (804)
367-9537, (804) 367-9753/TTY ☎, e-mail
spiller@dpor.state.va.us.

September 22, 2003 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, 5th Floor, Conference Room,
Richmond, Virginia. ☎ (Interpreter for the deaf provided upon
request)

A quarterly meeting of the board.

Contact: Judith A. Spiller, Executive Secretary, Board for
Professional and Occupational Regulation, 3600 W. Broad St.,
Richmond VA 23230, telephone (804) 367-8519, FAX (804)
367-9537, (804) 367-9753/TTY ☎, e-mail
spiller@dpor.state.va.us.

VIRGINIA PUBLIC GUARDIAN AND CONSERVATOR ADVISORY BOARD

September 25, 2003 - 10 a.m. -- Open Meeting
1600 Forest Avenue, Suite 102, Richmond, Virginia. ☎

A regular quarterly meeting.

Contact: Terry Raney, Guardianship Coordinator,
Department for the Aging, 1600 Forest Ave., Suite 102,
Richmond, VA 23229, telephone (804) 662-7049, FAX (804)
662-9354, toll-free (800) 552-3402, (804) 662-9333/TTY ☎, e-
mail traney@vdh.stat.va.us.

VIRGINIA RACING COMMISSION

† **August 20, 2003 - 9:30 a.m.** -- Open Meeting
Tyler Building, 1300 East Main Street, Richmond, Virginia. ☎

A monthly meeting. The commission will consider proposed
changes to its regulations pertaining to acquiring an interest
in licenses. Public comment will be received.

Contact: William H. Anderson, Director of Policy and
Planning, Virginia Racing Commission, P.O. Box 208, New
Kent, VA 23124, telephone (804) 966-7404, FAX (804) 966-
7418, e-mail Anderson@vrc.state.va.us.

REAL ESTATE APPRAISER BOARD

August 26, 2003 - 10 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia.

A meeting to conduct board business.

Contact: Karen W. O'Neal, Regulatory Programs
Coordinator, Real Estate Appraiser Board, 3600 W. Broad St.,
Richmond, VA 23230, telephone (804) 367-8537, FAX (804)
367-2475, (804) 367-9753/TTY ☎, e-mail
oneal@dpor.state.va.us.

REAL ESTATE BOARD

August 18, 2003 - 10 a.m. -- Open Meeting
September 17, 2003 - 9 a.m. -- Open Meeting
September 18, 2003 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. ☎ (Interpreter for
the deaf provided upon request)

Calendar of Events

A meeting to conduct informal fact-finding conferences. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: Debbie Amaker, Legal Assistant, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8582, FAX (804) 367-0194, (804) 367-9753/TTY ☎, e-mail amaker@dpor.state.va.us.

† **August 14, 2003 - 10 a.m.** -- Open Meeting

September 3, 2003 - 4 p.m. -- Open Meeting

October 22, 2003 - 4 p.m. -- Open Meeting

Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

A meeting of the Education Committee to review education applications.

Contact: Karen W. O'Neal, Regulatory Programs Coordinator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8537, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail oneal@dpor.state.va.us.

September 4, 2003 - 8:30 a.m. -- Open Meeting

October 23, 2003 - 8:30 a.m. -- Open Meeting

Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

A meeting to review fair housing cases.

Contact: Karen W. O'Neal, Regulatory Programs Coordinator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8537, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail oneal@dpor.state.va.us.

September 4, 2003 - 9 a.m. -- Open Meeting

October 23, 2003 - 9 a.m. -- Open Meeting

Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

A meeting to conduct board business.

Contact: Karen W. O'Neal, Regulatory Programs Coordinator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8537, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail oneal@dpor.state.va.us.

DEPARTMENT OF REHABILITATIVE SERVICES

September 26, 2003 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Rehabilitative Services intends to amend regulations entitled **22 VAC 30-30, Provisions of Independent Learning**. The purpose of the proposed action is to amend regulations governing

provision of independent living to comply with federal regulations.

Statutory Authority: § 51.5-14 of the Code of Virginia.

Public comments may be submitted until September 26, 2003, to Elizabeth E. Smith, Policy and Planning Director, Department of Rehabilitative Services, 8004 Franklin Farms Drive, P.O. Box K300, Richmond, VA 23288-0300.

Contact: Theresa Preda, Program Manager, Independent Living, 8004 Franklin Farms Dr., P.O. Box K300, Richmond, VA 23288-0300, telephone (804) 662-7078, FAX (804) 662-7122, toll-free 1-800-552-5019 or e-mail predatr@dps.state.va.us.

SEWAGE HANDLING AND DISPOSAL APPEAL REVIEW BOARD

August 13, 2003 - 10 a.m. -- Open Meeting

General Assembly Building, 9th and Broad Streets, Senate Room B, Richmond, Virginia. ♿

The Sewage Handling and Disposal Appeal Review Board will meet to hear appeals of the Department of Health's denials of septic tank permits.

Contact: Susan C. Sherertz, Secretary to the Board, Sewage Handling and Disposal Appeal Review Board, 1500 E. Main St., Room 115, Richmond, VA 23219, telephone (804) 371-4236, FAX (804) 225-4003, e-mail ssherertz@vdh.state.va.us.

VIRGINIA SMALL BUSINESS FINANCING AUTHORITY

† **August 26, 2003 - 11 a.m.** -- Open Meeting

Department of Business Assistance, 707 East Main Street, 3rd Floor, Richmond, Virginia. ♿

A meeting to review applications for loans submitted to the authority for approval and general business of the board. Meeting time is subject to change depending upon the agenda of the board.

Contact: Scott E. Parsons, Executive Director, Department of Business Assistance, P.O. Box 446, Richmond, VA 23218-0446, telephone (804) 371-8256, FAX (804) 225-3384, e-mail sparsons@dba.state.va.us.

STATE BOARD OF SOCIAL SERVICES

August 20, 2003 - 9 a.m. -- Open Meeting

August 21, 2003 - 9 a.m. -- Open Meeting

Radisson Hotel-Hampton, 700 Settlers Landing Road, Hampton, Virginia. ♿

A regular meeting. Public comment will begin at 1:30 p.m.

Contact: Pat Rengnerth, Board Liaison, State Board of Social Services, Division of Legislative Affairs, 730 E. Broad St., Room 930, Richmond, VA 23219-1849, telephone (804) 692-1826, FAX (804) 692-1962, (800) 828-1120/TTY ☎, e-mail pvr2@email1.dss.state.va.us.

September 12, 2003 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 that the State Board of Social Services intends to repeal regulations entitled **22 VAC 40-190, Regulation for Criminal Record Checks for Child Welfare Agencies**. The purpose of the proposed action is to repeal the current regulation for criminal record checks in order to promulgate a new regulation to establish sworn statement or affirmation, search of the central registry, and criminal history record check, in compliance with the Code of Virginia.

Statutory Authority: §§ 63.2-217, 63.2-1704, 63.2-1720, 63.2-1721, 63.2-1722, 63.2-1724, and 63.2-1727 of the Code of Virginia.

Contact: Wenda Singer, Program Consultant, Department of Social Services, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-2201, FAX (804) 692-2370 or e-mail wxs@dss.state.va.us.

September 12, 2003 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 that the State Board of Social Services intends to repeal regulations entitled **22 VAC 40-191, Background Checks for Child Welfare Agencies**. The purpose of the proposed action is to establish background checks for child welfare agencies, in compliance with the Code of Virginia. Background checks are sworn statement or affirmation, search of the central registry, and criminal history record check.

Statutory Authority: §§ 63.2-217, 63.2-1704, 63.2-1720, 63.2-1721, 63.2-1722, 63.2-1724, and 63.2-1727 of the Code of Virginia.

Contact: Wenda Singer, Program Consultant, Department of Social Services, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-2201, FAX (804) 692-2370 or e-mail wxs@dss.state.va.us.

DEPARTMENT OF SOCIAL SERVICES

September 19, 2003 - 10 a.m. -- Open Meeting
Department of Social Services, 730 East Broad Street, Lower Level 1, Richmond, Virginia. 

A regular meeting of the Family and Children's Trust Fund Board of Trustees.


Contact: Nan McKenney, Executive Director, Department of Social Services, 730 E. Broad St., 8th Floor, Richmond, VA 23219, telephone (804) 692-1823, FAX (804) 692-1869.

October 10, 2003 - 10 a.m. -- Open Meeting
Charlottesville, Virginia.


A quarterly meeting of the Virginia Commission on National and Community Services.

Contact: Felicia Jones, Administrative Assistant, Department of Social Services, 730 E. Broad St., 8th Floor, Richmond, VA 23219, telephone (804) 692-1998, FAX (804) 692-1999, toll-free (800) 638-3839, e-mail fj900@email1.dss.state.va.us.


BOARD OF SOCIAL WORK

September 19, 2003 - 10 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 1, Richmond, Virginia. 

A general business meeting to include consideration of regulatory, legislative and disciplinary matters as may be presented on the agenda. Public comment will be received at the beginning of the meeting

Contact: Arnice Covington, Administrative Assistant, Board of Social Work, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9914, FAX (804) 662-7250, (804) 662-7197/TTY , e-mail arnice.covington@dhp.state.va.us.

DEPARTMENT OF TAXATION

September 18, 2003 - 11 a.m. -- Open Meeting
Department of Taxation, 2220 West Broad Street, Richmond, Virginia. 

A meeting of the State Land Evaluation Advisory Council to adopt suggested ranges of values for agricultural, horticultural, forest and open-space land use and the use-value assessment program.


Contact: Keith Mawyer, Property Tax Manager, Department of Taxation, 2220 W. Broad St., Richmond, VA 23220, telephone (804) 367-8020.

COUNCIL ON TECHNOLOGY SERVICES

September 4, 2003 - 2 p.m. -- Open Meeting
October 2, 2003 - 2 p.m. -- Open Meeting
† November 6, 2003 - 2 p.m. -- Open Meeting
Department of Information Technology, 110 South 7th Street, 3rd Floor, Executive Conference Room, Richmond, Virginia.

A regular monthly meeting of the Executive Committee. Agenda and meeting information available at www.cots.state.va.us.

Contact: Jenny Hunter, COTS Executive Director, Council on Technology Services, Department of Technology Planning, 110 S. 7th St., Richmond, VA 23219, telephone (804) 786-9579, FAX (804) 786-9584, e-mail jhunter@gov.state.va.us.

August 13, 2003 - 9:30 a.m. -- Open Meeting
September 10, 2003 - 9:30 a.m. -- Open Meeting
October 8, 2003 - 9:30 a.m. -- Open Meeting
Department of Motor Vehicles, 2300 West Broad Street, 7th Floor, Executive Conference Room, Richmond, Virginia. 

Calendar of Events


A regular monthly meeting of the Change Management Workgroup. Agenda and details available at www.cots.state.va.us.

Contact: Jenny Hunter, COTS Executive Director, Council on Technology Services, 110 S. 7th St., Suite 135, Richmond, VA 23219, telephone (804) 786-9579, FAX (804) 786-9584, e-mail jhunter@gov.state.va.us.

August 21, 2003 - 3 p.m. -- Open Meeting

September 18, 2003 - 3 p.m. -- Open Meeting

October 16, 2003 - 3 p.m. -- Open Meeting


Department of Rehabilitative Services, 8004 Franklin Farms Drive, Lee Building, Rooms 101, 103, and 105, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A regular monthly meeting of the Security Workgroup. Agenda and more details can be found at www.cots.state.va.us.


Contact: Jenny Hunter, COTS Executive Director, Council on Technology Services, 110 S. 7th St., Suite 135, Richmond, VA 23219, telephone (804) 786-9579, FAX (804) 786-9584, e-mail jhunter@gov.state.va.us.

VIRGINIA TOURISM AUTHORITY

† **August 11, 2003 - 3 p.m.** -- Open Meeting

Primland Resort, 4621 Busted Rock Road, Meadows of Dan, Virginia. 

A meeting of the Governor's Outdoor Resources Tourism Advisory Panel. Committee reports will be given.


Contact: Polly Bozorth, Administrative Assistant, Virginia Tourism Authority, 901 E. Byrd St., Richmond, VA 23219, telephone (804) 371-8144, FAX (804) 786-1919, (804) 371-0327/TTY , e-mail pbozorth@virginia.org.

COMMONWEALTH TRANSPORTATION BOARD

August 20, 2003 - 2 p.m. -- Canceled

Department of Transportation, 1221 East Broad Street, Auditorium, Richmond, Virginia. 


September 18, 2003 - 9 a.m. -- Open Meeting

Virginia Port Authority, 600 World Trade Center, Board Room, Norfolk, Virginia. 


A work session of the Commonwealth Transportation Board and the Department of Transportation and Department of Rail and Public Transportation staff.

Contact: Frankie Giles, Agency Regulatory Coordinator, Commonwealth Transportation Board, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 225-4701, FAX (804) 225-4700, e-mail Frankie.Giles@VirginiaDOT.org.

August 21, 2003 - 9 a.m. -- Canceled

Department of Transportation, 1221 East Broad Street, Auditorium, Richmond, Virginia. 

September 18, 2003 - Noon -- Open Meeting

Virginia Port Authority, 600 World Trade Center, Board Room, Norfolk, Virginia. 


A monthly meeting to vote on proposals presented regarding bids, permits, additions and deletions to the highway system, and any other matters requiring board approval. Public comment will be received at the outset of the meeting on items on the meeting agenda for which the opportunity for public comment has not been afforded the public in another forum. Remarks will be limited to five minutes. Large groups are asked to select one individual to speak for the group. The board reserves the right to amend these conditions. Separate committee meetings may be held on call of the chairman. Contact VDOT Public Affairs at (804) 786-2715 for schedule.

Contact: Frankie Giles, Agency Regulatory Coordinator, Commonwealth Transportation Board, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 225-4701, FAX (804) 225-4700, e-mail Frankie.Giles@VirginiaDOT.org.

TREASURY BOARD

August 20, 2003 - 9 a.m. -- Open Meeting

September 17, 2003 - 9 a.m. -- Open Meeting


James Monroe Building, 101 North 14th Street, 3rd Floor, Treasury Board Room, Richmond, Virginia. 

A regular meeting.


Contact: Melissa Mayes, Treasury Board Secretary, Department of the Treasury, 101 N. 14th St., 3rd Floor, Treasury Board Room, Richmond, VA 23219, telephone (804) 371-6011, FAX (804) 225-3187, e-mail melissa.mayes@trs.state.va.us.

BOARD OF VETERINARY MEDICINE


August 13, 2003 - 9 a.m. -- Open Meeting

Department of Health Professions, 6603 West Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia. 


Discussions regarding inspection procedures, new legislation, compounding of drugs, formal hearing, and general board business.

Contact: Elizabeth A. Carter, Ph.D., Executive Director, Board of Veterinary Medicine, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9915, FAX (804) 662-7098, (804) 662-7197/TTY , e-mail elizabeth.carter@dhp.state.va.us.

August 14, 2003 - 9 a.m. -- Open Meeting

Department of Health Professions, 6603 West Broad Street, 5th Floor, Conference Room 4, Richmond, Virginia. 

A Special Conference Committee will conduct informal hearings (disciplinary hearings). These are public meetings, but public comment will not be received.

Contact: Terri H. Behr, Administrative Assistant, Board of Veterinary Medicine, 6603 W. Broad St., 5th Floor, Richmond, VA 23230, telephone (804) 662-9915, FAX (804) 662-7098, (804) 662-7197/TTY , e-mail terri.behr@dhp.state.va.us

VIRGINIA WAR MEMORIAL FOUNDATION

September 19, 2003 - Noon -- Open Meeting
Virginia War Memorial, 621 South Belvidere Street,
Richmond, Virginia. (Interpreter for the deaf provided upon
request)

A regular quarterly meeting of the Board of Trustees to
include the election of officers.

Contact: Jon C. Hatfield, Executive Director, Virginia War
Memorial Foundation, 621 S. Belvidere St., Richmond, VA
23220, telephone (804) 786-2060, FAX (804) 786-6652, e-
mail jhatfield@vawarmemorial.state.va.us.

BOARD FOR WASTE MANAGEMENT FACILITY OPERATORS

† October 2, 2003 - 10 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, 5th Floor, Richmond, Virginia. (Interpreter for the deaf provided upon
request)

A meeting to conduct board business.

Contact: David E. Dick, Executive Director, Board for Waste
Management Facility Operators, 3600 W. Broad St.,
Richmond, VA 23230, telephone (804) 367-8595, FAX (804)
367-2475, (804) 367-9753/TTY (Interpreter for the deaf provided upon
request), e-mail
wastemgt@dpor.state.va.us.

STATE WATER CONTROL BOARD

August 12, 2003 - 10 a.m. -- Open Meeting
Department of Environmental Quality, Piedmont Regional
Office, 4949-A Cox Road, Glen Allen, Virginia. (Interpreter for the deaf provided upon
request)

September 9, 2003 - 10 a.m. -- Open Meeting
Department of Forestry Headquarters, 900 Natural Resources
Drive, Charlottesville, Virginia. (Interpreter for the deaf provided upon
request)

A meeting of the advisory committee assisting the
department in the development of amendments to the
General VPA Permits for confined animal feeding
operations and confined poultry feeding operations and the
new General VPDES permit for confined animal feeding
operations.

Contact: T. Scott Haley, Department of Environmental
Quality, P.O. Box 10009, Richmond, VA 23240, telephone
(804) 698-4443, FAX (804) 698-4032, e-mail
tshaley@deq.state.va.us.

August 20, 2003 - 1 p.m. -- Open Meeting
Department of Environmental Quality, Piedmont Regional
Office, 4949-A Cox Road, Glen Allen, Virginia. (Interpreter for the deaf provided upon
request)

The second of two meetings of the advisory committee
assisting the department in the reissuance of the general
VPDES permit for storm water discharges from industrial
activities.

Contact: Burton R. Tuxford, Department of Environmental
Quality, P.O. Box 10009, Richmond, VA 23240, telephone
(804) 698-4086, FAX (804) 698-4032, e-mail
brtuxford@deq.state.va.us..

† September 10, 2003 - 2 p.m. -- Public Hearing
Department of Environmental Quality, 4949-A Cox Road, Glen
Allen, Virginia.

October 10, 2003 - Public comments may be submitted until
this date.

Notice is hereby given in accordance with § 2.2-4007 of the
Code of Virginia that the State Water Control Board intends
to amend regulations entitled **9 VAC 25-580, Underground
Storage Tanks: Technical Standards and Corrective
Action Requirements**. The purpose of the proposed
regulation is to incorporate changes in the law and clarify
that UST systems that missed the deadline for upgrade
must be closed in accordance with the requirements of the
regulation.

Statutory Authority: §§ 62.1-44.15 and 62.1-44.44.34:9 of the
Code of Virginia.

Contact: Fred Cunningham, Department of Environmental
Quality, P.O. Box 10009, Richmond, VA 23240, telephone
(804) 698-4285, FAX (804) 698-4266 or e-mail
fkunningh@deq.state.va.us.

† September 10, 2003 - 2 p.m. -- Public Hearing
Department of Environmental Quality, 4949-A Cox Road, Glen
Allen, Virginia.

October 10, 2003 - Public comments may be submitted until
this date.

Notice is hereby given in accordance with § 2.2-4007 of the
Code of Virginia that the State Water Control Board intends
to adopt regulations entitled **9 VAC 25-770, Financial
Responsibility Requirements for Mitigation Associated
with Tidal Dredging Projects**. The purpose of the
proposed regulation is to establish requirements for
demonstrating financial responsibility for the completion of
compensatory mitigation requirements for dredging projects
in tidal waters permitted under Virginia Water Protection
Permit Program and the acceptable mechanisms for making
the demonstration.

Statutory Authority: § 62.1-44.15 of the Code of Virginia.

Contact: Ellen Gilinsky, Department of Environmental
Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-
4375, FAX (804) 698-4032 or e-mail
egilinsky@deq.state.va.us.

BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS

September 9, 2003 - 8:30 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. (Interpreter for the deaf provided upon
request)

A meeting to conduct board business.

Contact: David E. Dick, Assistant Director, Department of
Professional and Occupational Regulation, 3600 W. Broad St.,

Calendar of Events

Richmond, VA 23230, telephone (804) 367-8595, FAX (804) 367-6128, (804) 367-9753/TTY ☎, e-mail waterwasteoper@dpor.state.va.us.

INDEPENDENT

VIRGINIA OFFICE FOR PROTECTION AND ADVOCACY

Protection and Advocacy of Individuals with Mental Illness Advisory Council

† **August 14, 2003 - 10 a.m.** -- Open Meeting
Hampton Inn and Suites, 900 West Main Street, Charlottesville, Virginia. ♿ (Interpreter for the deaf provided upon request)

Public comment is welcome and will be received at the start of the meeting.

Contact: Kim Ware, Program Operations Coordinator, Virginia Office for Protection and Advocacy, 202 N. 9th St., 9th Floor, Richmond, VA 23219, telephone (804) 225-2061, FAX (804) 225-3221, toll-free (800) 552-3962, (804) 225-2042/TTY ☎, e-mail wareka@vopa.state.va.us.

VIRGINIA RETIREMENT SYSTEM

August 20, 2003 - 11 a.m. -- Open Meeting
Bank of America Building, 1111 East Main Street, 4th Floor, Conference Room, Richmond, Virginia. ♿

A regular meeting of the Investment Advisory Committee. No public comment will be received.

Contact: Darla K. Glazier, Office Manager, Virginia Retirement System, P.O. Box 2500, Richmond, VA 23218, telephone (804) 649-8059, FAX (804) 786-1541, toll-free (888) 827-3847, (804) 344-3190/TTY ☎, e-mail dkestner@vrs.state.va.us.

August 20, 2003 - 11 a.m. -- Open Meeting
VRS Headquarters, 1200 East Main Street, Richmond, Virginia. ♿

The following committees will meet:

- 3 p.m. - Administration and Personnel Committee
- 3 p.m. - Benefits and Actuarial Committee
- 4 p.m. - Audit and Compliance Committee

Contact: Darla K. Glazier, Office Manager, Virginia Retirement System, P.O. Box 2500, Richmond, VA 23218, telephone (804) 649-8059, FAX (804) 786-1541, toll-free (888) 827-3847, (804) 344-3190/TTY ☎, e-mail dkestner@vrs.state.va.us.

NOTE: CHANGE IN MEETING TIME

August 21, 2003 - 9 a.m. -- Open Meeting

October 16, 2003 - 9 a.m. -- Open Meeting

VRS Headquarters, 1200 East Main Street, Richmond, Virginia. ♿

A regular meeting of the Board of Trustees. No public comment will be received.

Contact: Darla K. Glazier, Office Manager, Virginia Retirement System, P.O. Box 2500, Richmond, VA 23218, telephone (804) 649-8059, FAX (804) 786-1541, toll-free (888) 827-3847, (804) 344-3190/TTY ☎, e-mail dkestner@vrs.state.va.us.

LEGISLATIVE

VIRGINIA CODE COMMISSION

August 20, 2003 - 10 a.m. -- Open Meeting
September 17, 2003 - 10 a.m. -- Open Meeting
October 22, 2003 - 10 a.m. -- Open Meeting
General Assembly Bldg., 9th and Broad Streets, 6th Floor, Speaker's Conference Room, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A meeting to discuss the recodifications of Titles 1, 3.1 and 37.1 and other business that may come before the commission. A brief public comment period will be provided at the end of the meeting.


Contact: Jane Chaffin, Registrar of Regulations, Virginia Code Commission, General Assembly Bldg., 2nd Floor, 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591, FAX (804) 692-0625, e-mail jchaffin@leg.state.va.us.

VIRGINIA FREEDOM OF INFORMATION ADVISORY COUNCIL

† **August 14, 2003 - 1:30 p.m.** -- Open Meeting
General Assembly Building, 9th and Broad Streets, 2nd Floor, Senate Redistricting Room, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)


A Civil Commitment Subcommittee meeting. The FOIA Council appointed a subcommittee to review House Bill 2445 and Senate Bill 1149 from the 2003 Session that excluded the Sexually Violent Predator Commitment Review Commission from the provisions of FOIA. It was suggested that instead of excluding the commission from FOIA completely, an exemption to address the need for the protection of certain commission records and meetings from public disclosure be created. The council concurred that perhaps that discussion of this alternative may have been missed during the press of the legislative session. As a result, the council appointed council members Moncure and Edwards to examine the issues raised by HB 2445 and SB 1149.

Contact: Lisa Wallmeyer, Assistant Director, Virginia Freedom of Information Advisory Council, 910 Capitol St., General Assembly Bldg., 2nd Floor, Richmond, VA, telephone (804) 225-3056, FAX (804) 371-0169, toll-free (866) 448-4100, e-mail foiaCouncil@leg.state.va.us.

† August 27, 2003 - 10:30 a.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, 2nd Floor, Senate Redistricting Room, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A Records Exemptions Reorganization Subcommittee meeting. The FOIA Council appointed a subcommittee to consider a reorganization of § 2.2-3705 of the Code of Virginia, the records exemption section of FOIA. Currently, this section contains 87 exemptions from the release of records. As a practical matter, inclusion of this section in any piece of legislation expands the size of the bill by 10 or more pages, while the proposed amendment to this section may be only a few sentences. This makes the bill cumbersome and confusing to the public and legislators alike. The subcommittee will attempt to reorganize this section by identifying categories into which many of the exemptions could be grouped, and making each category a separate section in FOIA. Council members Moncure, Miller, and Axelle were appointed to this subcommittee. In anticipation of the August 27 meeting of the Records Exemptions Reorganization Subcommittee, staff of the FOIA Council has set aside time the morning of Thursday, August 14 to work on draft legislation to present to the subcommittee. Anyone with drafts or ideas about how the exemptions might be reorganized is welcome to join the staff at 9:30 a.m. on August 14 at the Division of Legislative Services.

Contact: Lisa Wallmeyer, Assistant Director, Virginia Freedom of Information Advisory Council, 910 Capitol St., General Assembly Building, 2nd Floor, Richmond, VA, telephone (804) 225-3056, FAX (804) 371-0169, toll-free (866) 448-4100, e-mail foiaCouncil@leg.state.va.us.

† September 15, 2003 - 2 p.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, House Room D, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A regular meeting.


Contact: Lisa Wallmeyer, Assistant Director, Virginia Freedom of Information Advisory Council, 910 Capitol St., General Assembly Building, 2nd Floor, Richmond, VA 23219, telephone (804) 225-3056, FAX (804) 371-0169, toll-free (866) 448-4100, e-mail foiaCouncil@leg.state.va.us.

JOINT COMMISSION ON TECHNOLOGY AND SCIENCE

August 19, 2003 - 10 a.m. -- Open Meeting
Video conference; location to be determined.

A meeting to discuss homeland security.

Contact: Mitchell Goldstein, Director, Joint Commission on Technology and Science, General Assembly Bldg., 2nd Floor, 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591.


September 2, 2003 - 9:30 a.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, House Room D, Richmond, Virginia. 

October 7, 2003 - 9:30 a.m. -- Open Meeting
Location to be determined.

A meeting of the JCOTS Cyberlaw Advisory Committee. The meeting will also be teleconferenced at 510 Cumberland Street, Suite 308, Bristol, Virginia.

Contact: Mitchell Goldstein, Director, Joint Commission on Technology and Science, General Assembly Bldg., 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591, e-mail jcots@leg.state.va.us.

September 3, 2003 - 1:30 p.m. -- Open Meeting

October 8, 2003 - 1:30 p.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, House Room D, Richmond, Virginia. 

A meeting of the JCOTS Advisory Committee on Integrated Government.

Contact: Eric Link, Staff Attorney, Joint Commission on Technology and Science, General Assembly Bldg., 2nd Floor, 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591, FAX (804) 371-0169, e-mail elink@leg.state.va.us.


September 16, 2003 - 9:30 a.m. -- Open Meeting

October 21, 2003 - 9:30 a.m. -- Open Meeting
Location to be determined.

A meeting of the JCOTS Advisory Committee on Consumer Protection.

Contact: Mitchell Goldstein, Director, Joint Commission on Technology and Science, General Assembly Bldg., 2nd Floor, 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591.

September 17, 2003 - 1:30 p.m. -- Open Meeting

October 22, 2003 - 1:30 p.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, House Room D, Richmond, Virginia. 

A meeting of the JCOTS Advisory Committee on the Hard Sciences.

Contact: Eric Link, Staff Attorney, Joint Commission on Technology and Science, General Assembly Bldg., 2nd Floor, 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591, FAX (804) 371-0169, e-mail elink@leg.state.va.us.

CHRONOLOGICAL LIST

OPEN MEETINGS

August 11

Alcoholic Beverage Control Board
Environmental Quality, Department of
† Hearing Aid Specialists, Board for
Nursing, Board of
- Special Conference Committee
† Tourism Authority, Virginia

August 12

Accountancy, Board of
- Enforcement Committee
Cemetery Board

Calendar of Events

- Chesapeake Bay Local Assistance Board
Conservation and Recreation, Department of
Contractors, Board for
- Virginia Land Conservation Foundation
† Medicine, Board of
Nursing, Board of
- Special Conference Committee
Nursing Home Administrators, Board of
Water Control Board, State
- August 13**
Cemetery Board
Conservation and Recreation, Department of
Environmental Quality, Department of
- Litter Control and Recycling Fund Advisory Board
Health, Department of
- Marina Regulations Advisory Committee
† Medicine, Board of
- Informal Conference Committee
Milk Commission, State
Sewage Handling and Disposal Appeal Review Board
Technology Services, Council on
- Change Management Workgroup
Veterinary Medicine, Board of
- August 14**
Audiology and Speech-Language Pathology, Board of
† Freedom of Information Advisory Council, Virginia
- Civil Commitment Subcommittee
Nursing, Board of
- Special Conference Committee
† Pharmacy, Board of
- Special Conference Committee
† Protection and Advocacy, Virginia Office for
- Protection and Advocacy of Individuals with Mental
Illness Advisory Council
† Real Estate Board
- Education Committee
Veterinary Medicine, Board of
- Special Conference Committee
- August 15**
Dentistry, Board of
† Fire Services Board
- Administration and Policy Committee
- Finance Committee
- Fire Education and Training Committee
- Fire Prevention and Control Committee
Governor, Office of the
- Urban Policy Task Force
Health Professions, Department of
- Intervention Program Committee
Museum of Natural History, Virginia
- Executive Committee
† Optometry, Board of
- Special Conference Committee
- August 16**
† Fire Services Board, Virginia
- August 18**
Environmental Quality, Department of
- Water Policy Technical Advisory Committee
† Mental Health, Mental Retardation and Substance Abuse
Services, Department of
- Olmstead Steering Committee
† Pharmacy, Board of
- Informal Conference Committee
Real Estate Board
- August 19**
† Mines, Minerals and Energy, Department of
- Virginia Gas and Oil Board
Nursing, Board of
- Special Conference Committee
Technology and Science, Joint Commission on
- Advisory Committee on Homeland Security
- August 20**
Aviation Board, Virginia
Code Commission, Virginia
Compensation Board
Contractors, Board for
Environmental Quality, Department of
- Recycling Markets Development Council
George Mason University
Medicine, Board of
- Informal Conference Committee
† Pharmacy, Board of
- Special Conference Committee
† Racing Commission, Virginia
Retirement System, Virginia
- Administration and Personnel Committee
- Audit and Compliance Committee
- Benefits and Actuarial Committee
- Investment Advisory Committee
Social Services, State Board of
Treasury Board
Water Control Board, State
- August 21**
Agriculture and Consumer Services, Department of
- Virginia Cotton Board
Cemetery Board
Counseling, Board of
- Credentials Committee
Design-Build/Construction Management Review Board
Environmental Quality, Department of
- Natural Resources Funding Committee
Game and Inland Fisheries, Board of
Health, Department of
- Sewage Handling and Disposal Advisory Committee
Labor and Industry, Department of
- Virginia Apprenticeship Council Subcommittee
† Manufactured Housing Board, Virginia
Social Services, State Board of
Technology Services, Council on
- Security Workgroup
Retirement System, Virginia
- Board of Trustees
- August 22**
Counseling, Board of
- August 25**
Agricultural Council, Virginia
Agriculture and Consumer Services, Department of
- Virginia Horse Industry Board
Alcoholic Beverage Control Board
- August 26**
Agricultural Council, Virginia
† Chesapeake Bay Local Assistance Board
- Policy Committee
Contractors, Board for

† Environmental Quality, Department of
Marine Resources Commission
Nursing, Board of
- Special Conference Committee
Real Estate Appraiser Board
† Small Business Financing Authority, Virginia

August 27

Asbestos, Lead, and Home Inspectors, Virginia Board for
† Environmental Quality, Department of
† Freedom of Information Advisory Council, Virginia
- Records Exemption Reorganization Subcommittee

August 28

Medicine, Board of
- Informal Conference Committee
† Mental Health, Mental Retardation and Substance Abuse
Services, Department of
† Motor Vehicles, Department of

August 29

Dentistry, Board of

September 2

Technology and Science, Joint Commission on
- Advisory Committee on Cyberlaw

September 3

Medicine, Board of
- Informal Conference Committee
Real Estate Board
- Education Committee
Technology and Science, Joint Commission on
- Advisory Committee on Integrated Government

September 4

† Aging, Commonwealth Council on
- Public Relations Committee
Museum of Fine Arts, Virginia
- Executive Committee
Information Technologies Agency, Virginia
- VGIN Advisory Board
Real Estate Board
Technology Services, Council on
- Executive Committee

September 5

Art and Architectural Review Board
Environmental Quality, Department of
- Natural Resources Partnership
† Opticians, Board for

September 8

Alcoholic Beverage Control Board

September 9

Contractors, Board for
Funeral Directors and Embalmers, Board of
Governor, Office of the
- Urban Policy Task Force
Medical Assistance Services, Board of
† Museum of Fine Arts, Virginia
- Executive Committee
Water Control Board, State
Waterworks and Wastewater Works Operators, Board for

September 10

Architects, Professional Engineers, Land Surveyors,
Certified Interior Designers and Landscape Architects,
Board for
Blind and Vision Impaired, Department of the
Funeral Directors and Embalmers, Board of

Information Technologies Agency, Virginia
- Wireless E-911 Services Board
Jamestown-Yorktown Foundation
- Steering Committee
† Motor Vehicles, Department of
- Medical Advisory Board
Technology Services, Council on
- Change Management Workgroup

September 11

Environmental Quality, Department of
- Water Policy Technical Advisory Committee

September 12

† Alzheimer's Disease and Related Disorders Commission
Child Fatality Review Team, State
Museum of Fine Arts, Virginia
- Expansion Committee

September 13

† Blind and Vision Impaired, Department for the
- Statewide Rehabilitation Council for the Blind
Conservation and Recreation, Department of
- Virginia Cave Board

September 15

† Barbers and Cosmetology, Board for
† Freedom of Information Advisory Council, Virginia
Museum of Natural History, Virginia
- Executive Committee
† Opticians, Board for

September 16

Contractors, Board for
† Corrections, Board of
- Correctional Services/Policy and Regulations Committee
- Liaison Committee
† Environmental Quality, Department of
- Ground Water Protection Steering Committee
Technology and Science, Joint Commission on
- Advisory Committee on Consumer Protection

September 17

Code Commission, Virginia
† Compensation Board
† Corrections, Board of
- Administration Committee
Education, Board of
Medicine, Board of
- Informal Conference Committee
Museum of Fine Arts, Virginia
- Communications and Marketing Committee
- Education and Programs Committee
- Exhibitions Committee
- Expansion Committee
- Legislative Committee
- Planning Committee

Real Estate Board
Technology and Science, Joint Commission on
- Advisory Committee on the Hard Sciences
Treasury Board

September 18

† Criminal Justice Services Board
Design-Build/Construction Management Review Board
Museum of Fine Arts, Virginia
- Buildings and Grounds Committee
- Collections Committee
- Finance Committee

Calendar of Events

- Board of Trustees
- Polygraph Examiners Advisory Board
- Real Estate Board
- Taxation, Department of
 - State Land Evaluation Advisory Council
- Technology Services, Council on
 - Security Workgroup
- Transportation Board, Commonwealth
- September 19**
- Social Services, Department of
 - Family and Children's Trust Fund Board of Trustees
- Social Work, Board of
- War Memorial Foundation, Virginia
- September 22**
- Alcoholic Beverage Control Board
- Nursing, Board of
- Professional and Occupational Regulation, Board for
- September 23**
- Governor, Office of the
 - Urban Policy Task Force
- Marine Resources Commission
- Nursing, Board of
- September 24**
- At-Risk Youth and Families, Comprehensive Services for
 - State Executive Council
- George Mason University
- Nursing, Board of
- September 25**
- Nursing, Board of
- Public Guardian and Conservator Advisory Board, Virginia
- September 26**
- † Agriculture and Consumer Services, Board of
- September 29**
- Environmental Quality, Department of
 - Water Policy Technical Advisory Committee
- September 30**
- Contractors, Board for
- October 2**
- Technology Services, Council on
 - Executive Committee
- † Waste Management Facility Operators, Board for
- October 3**
- Art and Architectural Review Board
- October 7**
- Museum of Fine Arts, Virginia
 - Executive Committee
- Nursing, Board of
 - Special Conference Committee
- Technology and Science, Joint Commission on
 - Advisory Committee on Cyberlaw
- October 8**
- Contractors, Board for
- Nursing, Board of
 - Special Conference Committee
- Technology Services, Council on
 - Change Management Workgroup
- Technology and Science, Joint Commission on
 - Advisory Committee on Integrated Government
- October 10**
- Social Services, Department of
 - Virginia Commission on National and Community Service

- October 14**
- Alcoholic Beverage Control Board
- † Blind and Vision Impaired, Board for the
- Contractors, Board for
- † Medical Assistance Services, Department of
 - Medicaid Physician Advisory Committee
- Nursing, Board of
 - Special Conference Committee
- October 15**
- Environmental Quality, Department of
 - Water Policy Technical Advisory Committee
- Nursing, Board of
 - Special Conference Committee
- October 16**
- Design-Build/Construction Management Review Board
- Retirement System, Virginia
 - Board of Trustees
- Technology Services, Council on
 - Security Workgroup
- October 17**
- Health Professions, Department of
- October 20**
- Museum of Natural History, Virginia
 - Executive Committee
- October 21**
- Contractors, Board for
- Nursing, Board of
 - Special Conference Committee
- Technology and Science, Joint Commission on
 - Advisory Committee on Consumer Protection
- October 22**
- Code Commission, Virginia
- Education, Board of
- Real Estate Board
 - Education Committee
- Technology and Science, Joint Commission on
 - Advisory Committee on The Hard Sciences
- October 23**
- Nursing, Board of
 - Special Conference Committee
- Real Estate Board
- October 24**
- Health, State Board of
- October 27**
- Alcoholic Beverage Control Board
- October 28**
- Contractors, Board for
- Marine Resources Commission
- Nursing, Board of
 - Special Conference Committee
- October 29**
- † At-Risk Youth and Families, Comprehensive Services for
 - State Executive Council
- † Contractors, Board for
 - Tradesman and Education Committee
- † Labor and Industry, Department of
 - Virginia Migrant and Seasonal Farmworkers Board
- November 4**
- † Contractors, Board for
- † Museum of Fine Arts, Virginia
 - Executive Committee

November 5

† Cemetery Board

November 6

† Council on Technology Services
- Executive Committee

November 7

† Art and Architectural Review Board

November 10

† Alcoholic Beverage Control Board

PUBLIC HEARINGS

August 12

Labor and Industry, Department of
- Safety and Health Codes Board

August 19

Professional and Occupational Regulation, Board for

August 20

Air Pollution Control Board, State
Mental Health, Mental Retardation and Substance Abuse
Services, Department of

August 26

Air Pollution Control Board, State

August 27

† Environmental Quality, Department of

August 28

Professional and Occupational Regulation, Board for

September 10

† Water Control Board, State

September 22

Professional and Occupational Regulation, Board for

September 23

Mines, Minerals and Energy, Department of

September 25

† Mental Health, Mental Retardation and Substance Abuse
Services, Department of
Mines, Minerals and Energy, Department of

October 1

Professional and Occupational Regulation, Board for

October 16

† Agriculture and Consumer Services, Department of
- Pesticide Control Board